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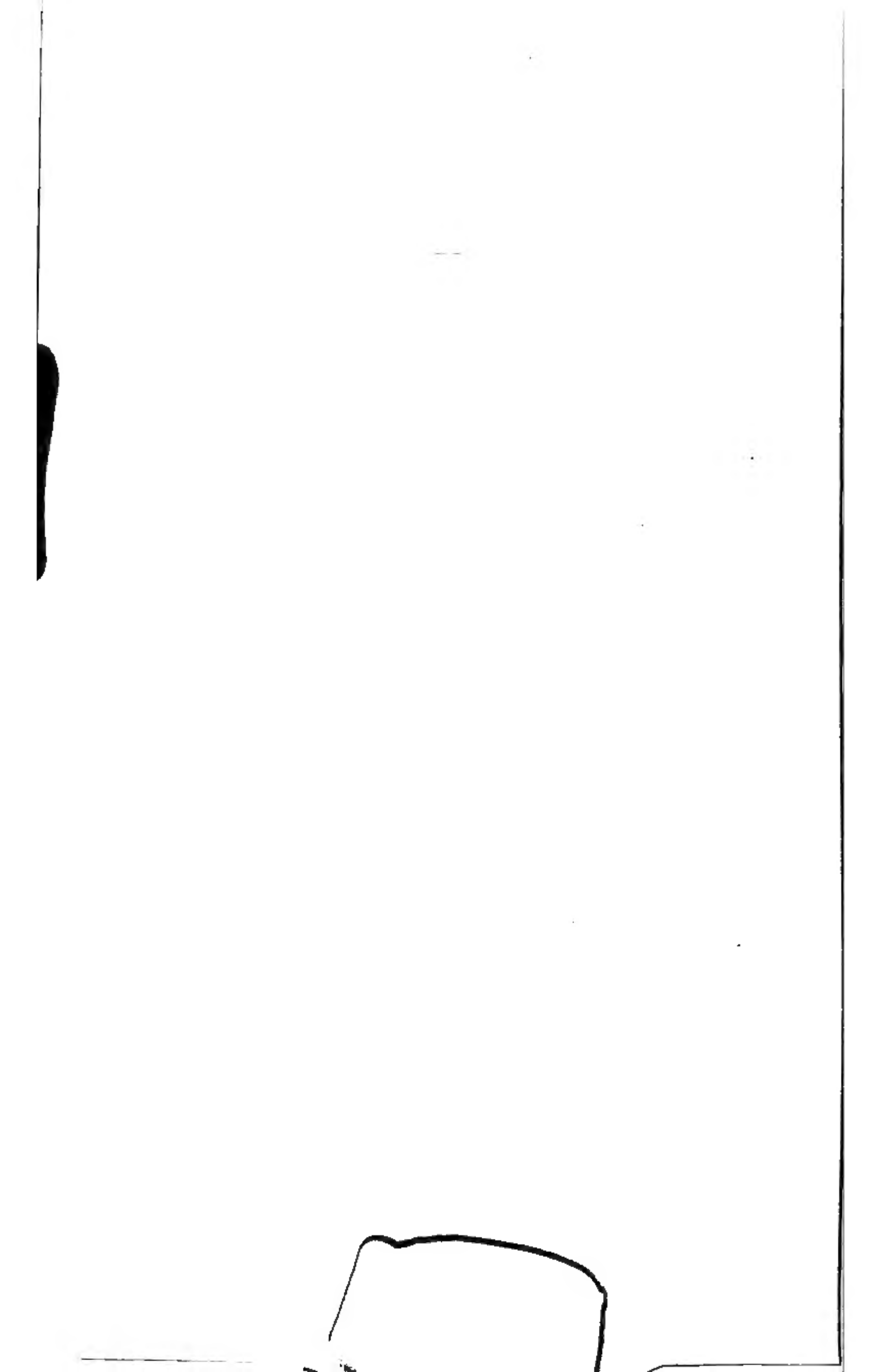
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STATUTES AT LARGE

OF THE

Reber
STATE OF NEW YORK,

COMPRISING THE

REVISED STATUTES, AS THEY EXISTED ON THE 1ST DAY OF JULY, 1862,

AND ALL THE

ex 1

GENERAL PUBLIC STATUTES THEN IN FORCE, WITH REFERENCES TO JUDICIAL DECISIONS, AND THE
MATERIAL NOTES OF THE REVISERS IN THEIR REPORT TO THE LEGISLATURE.

EDITED BY

JOHN W. EDMONDS.

IN FIVE VOLUMES.

VOLUME IV.

CONTAINING CHAPTER XX, OF PART FIRST, "OF THE POLICE;" PART SECOND, "OF RIGHTS OF
PROPERTY AND PERSONS;" AND ALL OF PART THIRD, "OF ADMINISTRATION
OF CIVIL JUSTICE," EXCEPT THE CODE OF PROCEDURE.

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GENERAL STATUTES
OF THE
STATE OF NEW YORK; &C.

PART I.

TERRITORY, CIVIL POLITY, AND INTERNAL ADMINISTRATION.

CHAPTER XX.

Police.

CHAP. 6.

AN ACT concerning Bastards in certain Counties.

PASSED October 14, 1828.

The People of the State of New York, represented in Senate and Assembly, do enact as follows :

§ 1. In those counties where the distinction between town poor and county poor has been abolished, and in those counties which are by law liable to the support of the poor thereof, or of the poor of the towns of such county, the same proceedings may be had, and with the like effect, against the father and mother of any bastard child already born in any such county, or hereafter born therein, or of any child likely to be born a bastard, as if such bastard was chargeable or likely to become chargeable to any town, and such proceedings may be instituted by the overseers of the poor of the town where such bastard shall be born, or be likely to be born, or by the county superintendents of the poor of such county.

Proceed-
ings when
a county
charge.

CHAP. 287.

AN ACT relative to Moneys in the hands of Overseers of the Poor.

PASSED April 27, 1829.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Money how
to be appro-
priated.

§ 1. It shall be lawful for the inhabitants of any town in such counties as have abolished the distinction between county and town paupers, and in such counties as may hereafter abolish such distinction, at any annual or special town-meeting to appropriate all or any part of the moneys and funds remaining in the hands of the overseers of the poor of such town after such abolition, to such objects, and for such purposes, as shall be determined on at such meeting.

School fund.

§ 2. If any such meeting shall appropriate such money or funds for the benefit of common schools in their town, the money so appropriated shall be denominated "The common school fund of such town," and shall be under the care and superintendence of the commissioners of common schools of said town.

Money and
securities
to be deliv-
ered to
school com-
missioners.

§ 3. If any such meeting shall appropriate such money or funds for the benefit of common schools, after such appropriation shall have been made, and after the commissioners of common schools shall have taken the oath of office, the overseers of the poor of such towns shall then pay over and deliver to the said commissioners, such moneys, bonds, mortgages, notes and other securities, remaining in their hands as such overseers of the poor, as will comport with the appropriation made for the benefit of common schools of their town.

Suits.

§ 4. The said commissioners of common schools may sue for and collect in their name of office, the money due or to become due on such bonds, mortgages, notes or other securities, and also all other securities by them taken under the provisions of this act.

Permanent
school fund.

§ 5. The moneys, bonds, mortgages, notes and other securities aforesaid, shall continue and be a permanent fund, to be denominated the common school fund of the town appropriating the same, the annual interest of which shall be applied to the support of common schools in such towns, unless the inhabitants of such town, in annual town-meeting, shall make a different disposition of the whole of the principal and interest, or any part thereof, for the benefit of the common schools of such town.

Loans on
bond and
mortgage.

§ 6. The said commissioners of common schools whenever the whole or any part of the principal of said fund shall come to their hands, shall loan the same on bond, secured by a

mortgage on real estate of double the value of the moneys so loaned, exclusive of buildings or artificial erections thereon.

§ 7. The said commissioners of common schools may purchase in the estate on which the fund shall have been secured, upon the foreclosure of any mortgage, and may hold and convey the same for the use of said fund.

Foreclosure
of mort-
gage.

§ 8. The said commissioners of common schools shall retain the interest of said common school fund, which shall be distributed and applied to the support of common schools of such town, in like manner as the public money for the support of common schools shall be distributed by law.

Interest
how to be
applied.

§ 9. The said commissioners of common schools shall account annually, in such manner and at such time as town officers are required by law to account, and shall deliver to their successors in office all moneys, books, securities and papers whatsoever, relating to said fund, and shall take a receipt therefor, and file the same with the town clerk.

Commis-
sioners to
account
annually.

CHAP. 277.

AN ACT to amend the Act for the relief and support of Indigent Persons. Part First, Chapter Twenty, Title First.

PASSED April 25, 1831.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. Any person who shall bring or remove, or cause to be brought or removed, any poor or indigent person, from any place without this state, into any county or town within it, and there leave or attempt to leave such person, with intent to make such county or town chargeable with the support of such pauper, he shall forfeit and pay fifty dollars, to be recovered before any justice of the peace of the county into which such pauper shall be brought, to be sued for and recovered by and in the name of the superintendents of the county poor of said county, or by the overseers of the poor of the town into which such pauper shall be brought; and, moreover, shall be obliged to convey such pauper out of the state, or support him at his own expense: and it shall be lawful for the justice before whom any person shall be convicted for a violation of this act, to require of such person satisfactory security that he will, within a reasonable time, to be named by the justice, transport such pauper out of the state, or indemnify the town or county for all charges and expenses which may be incurred in the support of such pauper; and if such person shall refuse to give such security when so required, it shall be the duty of the justice to commit him to the common jail of the county, for a term not exceeding three months.

Penalty for
bringing
foreign pau-
pers into
this state.

PART I.
How appli-
ed.

§ 2. All penalties recovered under this act, shall be applied as directed in the sixty-fifth section of the law hereby amended.

Repeal.

§ 3. The sixty-fourth section of title first, chapter twenty, first part of the Revised Statutes is hereby repealed.

Children to
be taught.

§ 4. The superintendents of the county poor-houses which now are or hereafter may be established by law, are hereby required to cause all county and town paupers, over the age of five and under the age of sixteen years, who now are or hereafter may be in said poor-houses, to be taught and educated, in the same manner as children are now taught in the common schools of this state, at least one-fourth part of the time the said paupers shall remain in said poor-houses.

Expense.

§ 5. The expense of teaching and educating the said paupers, shall be paid by the counties and towns, in the same manner as other contingent charges are paid for the support of said paupers.

Not to be
returned in
school re-
port.

§ 6. It shall not be lawful for the trustees of any school district to include, in their annual returns, the names of any children who are supported at a county poor-house.

CHAP. 26.

AN ACT extending the Powers of County Superintendents of the Poor.

PASSED February 23, 1832.

The People of the State of New York, represented in Senate and Assembly, do enact as follows :

Accounts of
the over-
seers of the
poor, how
audited.

§ 1. The superintendents of the poor in the several counties in this state shall audit and settle all accounts of overseers of the poor, justices of the peace, and all other persons, for services relating to the support, relief or transportation of county paupers; and shall, from time to time, draw on the county treasurer for the amount of the accounts which they shall so audit and settle.

9 B., 267.

Bastard
children.

§ 2. Superintendents of the poor in any county in this state shall have power to make such compromise and arrangements with the putative fathers of any bastard children, within their jurisdiction, relative to the support of such children, as they shall deem equitable and just; and thereupon, to discharge such putative father from all liability for the support of such bastards.

3 H., 116.

CHAP. 236.

AN ACT to amend sections thirty-nine and forty-two of part first, chapter twentieth, title first of the Revised Statutes, so as to authorize any one of the overseers of the poor to perform the services therein mentioned.

PASSED May 1, 1834.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. Any one of the overseers of the poor, is hereby authorized to perform the services mentioned in the thirty-ninth and forty-second sections of part first, chapter twentieth, title first of the Revised Statutes. One overseer may act.

§ 2. So much of the thirty-ninth and forty-second sections of the act hereby amended, as is contrary hereto, be and the same is hereby repealed. Repeal.

CHAP. 299.

AN ACT to amend an act entitled "An act in relation to the superintendents of the poor of the several counties of this state," passed April 25th, 1832.

PASSED May 11, 1835.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. In case any vacancy shall happen or exist in the office of superintendent of the poor in any county in this state, by death, refusal to serve, or otherwise, it shall be lawful for the first judge of the county in which such vacancy shall be, to appoint some proper person to fill the said vacancy, who shall hold and exercise the duties of the said office until the next annual meeting of the board of supervisors of such county, which appointment shall be in writing, signed by the said judge, and filed in the office of the clerk of the said county. Vacancy in office of county superintendent.

CHAP. 202.

AN ACT to amend the law for the support of bastards.

PASSED April 12, 1838.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. Whenever a compromise shall be made with the putative father of a bastard child, pursuant to sections sixty- Mothers to receive money in

PART I.
certain
cases.

eight and sixty-nine, of title six of chapter twenty of the first part of the Revised Statutes, the mother of such child, on giving security for the support of the child, and to indemnify the city and county, or the town and county, from the maintenance of the child, to the satisfaction of the officers making the compromise, shall be entitled to receive the moneys paid or secured by such putative father as the consideration of such compromise.

3 H., 116.

Or a weekly
allowance.

§ 2. When the mother of such child shall be unable to give such security, but shall be able and willing to nurse and take care of the child, she shall be paid the same weekly allowance for nursing and taking care of the child, out of the moneys paid by the father on such compromise, as he shall have been liable to pay by the order of filiation; such weekly sum to be paid the mother, may be prescribed, regulated, or reduced, as in the case of an order of filiation.

CHAP. 214.

AN ACT to amend the Revised Statutes in relation to the duties of the superintendents of the poor in the several counties in this state.

PASSED April 11, 1842.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Report,
when and
how to be
made.

§ 1. In addition to the reports which the superintendents of the poor in the several counties in this state are now required by law to make, it shall be their duty, in the month of December in each year, to report to the secretary of state, in such form as he shall direct, the sex and native country, of every pauper who shall have been relieved or supported by them during the year preceding the day on which such report shall be made, together with a statement of the causes either direct or indirect, which have operated to render such person a pauper, so far as the same can be ascertained, together with such other items of information in respect to the character and condition of such paupers, as the secretary of state shall direct.

As amended by Laws of 1849, ch. 100.

Penalty for
neglect.

§ 2. The same penalty for the neglect of any superintendent of the poor to comply with the provisions of this act, as are prescribed in section seventy-eight, title one, part one, chapter twenty of the Revised Statutes, shall be imposed on such superintendent for such neglect.

This act to
be published.

§ 3. The secretary of state shall cause this act to be published, together with such forms and instructions for its execution as he shall deem necessary, and cause the same to be

distributed to the superintendents of the poor of the several counties in this state, the expense of which shall be paid by the treasurer on the warrant of the comptroller; and the secretary of state shall annually report to the legislature the results of the information obtained in pursuance of this act.

CHAP. 334.

AN ACT in relation to the temporary relief of the poor in the county of Livingston, and such other counties as may adopt the provisions of this act.

PASSED May 14, 1845.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. The expenses which shall be incurred in the relief or support of indigent persons entitled thereto by law, in the county of Livingston, before removing such persons to the county poor-house of such county, pursuant to the provisions of the Revised Statutes for the relief and support of indigent persons, including the charges of overseers of the poor for services rendered in providing for such relief and support, (but not the expense of such removal,) shall be a charge upon the towns in which the persons so relieved or supported shall respectively be.

Towns in which persons relieved reside, to pay expenses.

§ 2. The overseers of the poor of said county shall provide for such relief or support, pursuant to the order of a justice of the peace to be obtained in the manner provided by the forty-sixth section of the Revised Statutes above mentioned, except for medical services to an amount not exceeding five dollars, for which no order shall be required, until such persons shall be removed to the county poor-house of such county, or until the necessity for any further expenditure shall cease; and it shall not be necessary to obtain the sanction of the superintendent of the poor to authorize the expenditure of a greater sum than ten dollars for the relief of any one poor person or family. Provided, that such orders granted pursuant to this section shall be granted without fee or reward.

Overseers of the poor to provide for temporary relief.

7 How. P. R., 255.

§ 3. The overseers of the poor shall keep a book, to be procured at the expense of the town, in which they shall enter the name, age, sex and native country of every poor person who shall be relieved or supported by them, together with a statement of the causes, either direct or indirect, which shall have operated to render such person a pauper, so far as the same can be ascertained. They shall also enter in such book a statement of all moneys received by them, when, and from whom, and on what account received, and of all moneys

Names, ages, &c. of poor relieved to be entered in a book.

PART I.

Book to be
laid before
the town
auditors.

paid out by them, when, and to whom paid, and on what authority.

§ 4. On the Tuesday next preceding the annual town meeting, in every year, and also on the Thursday next preceding the annual meeting of the board of supervisors of such county in every year, the overseers of the poor shall lay the said book before the board of town auditors, together with a just and true account of all moneys received and expended by them for the use of the poor since the last preceding meeting of the said board of town auditors. The said board of auditors shall compare said account with the entries in the poor book aforesaid, and shall examine the vouchers in support thereof, and audit and settle the same, and state the balance due from the overseers, or to them as the case may be. The said account shall be filed with the town clerk; and at every annual town meeting, the town clerk shall produce such poor accounts for the then preceding year, and read the same if required by the meeting.

Accounts
how audit-
ed.

§ 5. The accounts of overseers of the poor for their services in affording the relief and support mentioned in this act, shall be audited, certified, levied, collected and paid in the manner now provided by law in respect to other town accounts.

Town audi-
tors to cer-
tify the
names,
ages, &c.,
of persons
relieved.

§ 6. At the annual meeting of the board of town auditors on the Thursday preceding the annual meeting of the board of supervisors, the said board of town auditors shall make a certificate to be signed by a majority of the board, specifying the name, age, sex and native country of every person who shall have been relieved or supported by the overseers of the poor, during the then preceding year, and stating the causes, either direct or indirect, which shall have operated to render such person a pauper, and the amount of money expended for the use of each and every person so relieved or supported as allowed by the board of auditors; together with the amount allowed to each overseer for services rendered in relation to the temporary relief of the poor as aforesaid; which certificate the said board of auditors shall cause to be delivered to the superintendents of the poor of such county, or one of them, on or before the first day of December then next.

Estimate to
be made of
amount
necessary
for next
year.

§ 7. The board of town auditors shall also at their annual meeting mentioned in the last preceding section, make an estimate to be signed by a majority of the board, of the sum which they shall deem necessary for the temporary relief and support of the poor the ensuing year, and to supply any deficiency in the preceding year, and shall cause the said estimate to be laid before the board of supervisors of such county, on the first day of their then next annual meeting. The board of supervisors shall cause the said sum to be levied and collected in the town where the same was estimated to be necessary as aforesaid, in the manner now provided by law in respect to other town charges, and to be paid to the overseers of the poor of such town.

§ 8. It shall be the duty of the board of supervisors of such county to examine the accounts of the superintendents of the poor, and audit the same.

CHAP. 245.

AN ACT in relation to the temporary relief of the Poor.

PASSED May 12, 1846.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. Whenever the board of supervisors of any county in this state shall by resolution, declare their intention to adopt the provisions of the act entitled "An act in relation to the temporary relief of the poor in the county of Livingston, and such other counties as may adopt the provisions of this act," passed May 14th, 1845, all the provisions of said act shall extend and apply to said county.

Temporary
relief in
counties.

§ 2. The provisions of the first section of this act shall not apply to the city and county of New York, nor to the county of Kings.

New York
and Kings
excepted.

CHAP. 498.

AN ACT to authorize the election of county superintendents of the poor, and county treasurers, by the people.

PASSED December 16, 1847.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. It shall be lawful hereafter for the board of supervisors in any county, at any annual meeting of such board, to direct by resolution that thereafter only one county superintendent of the poor shall be elected in and for such county, who shall hold his office for three years; but in all counties where no such resolution shall have been passed, three county superintendents of the poor shall be elected.

Provision
respecting
the number
to be elect-
ed.

See Laws of 1862, ch. 298.

[§ 2 temporary.]

§ 3. In counties where only one superintendent of the poor shall be chosen, he shall hold his office for three years, but in counties where three are chosen, one of the said superintendents so elected shall hold his office for one year, one for two years, and one for three years, and the clerk of the county shall, on the first day of January after such election, determine by lot which of said superintendents shall hold his office for one year, which for two, and which for three

Tenure of
office and
classifica-
tion of su-
perinten-
dents.

PART I.Vacancies
how filled.Laws to ap-
ply.

Repeal.

New York
excepted.

years, and annually thereafter there shall be elected one superintendent, who shall hold his office for three years.

§ 4. Boards of supervisors shall appoint county superintendents of the poor or county treasurers, to fill vacancies which may happen in such offices.

§ 5. All laws now in force, not inconsistent with the provision of this act, applicable to county superintendents of the poor and county treasurers, shall apply to the officers elected or appointed pursuant to this act, and all laws and parts of laws inconsistent with the provisions of this act, are hereby repealed.

§ 6. None of the provisions of this act shall apply to the city and county of New York.

CHAP. 176.

AN ACT to authorize the Supervisors in any of the several counties therein named, to restore the distinction between town and county poor.

PASSED April 4, 1848.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Certain
counties
may re-
store the
distinction
between
town and
county
poor.

§ 1. The board of supervisors in any of the counties of Livingston, Sullivan, Broome, Cortland, Orange, Allegany, Seneca, Franklin, Onondaga and Ulster, at any annual meeting, by a vote of a majority of all the members elected, in favor thereof, may determine to restore the distinction between county poor and town poor in their counties respectively; and upon their filing such determination duly certified by the clerk of the board, with the county clerk, the distinction between the county poor and the town poor shall thereupon be restored, from and after the time to be fixed by such board of supervisors, either at the commencement or the close of the year for which said supervisors were elected to serve. It shall not be lawful for any officer, whose duty it may be to provide for the maintenance, care or support of the poor and indigent persons at public expense, to put up at auction or sale, the keeping, care or maintenance of any such poor or indigent person to the lowest bidder, and every contract which may be entered into for the support, care or maintenance of any such poor or indigent person, in pursuance of, or accordance with, any bid or bids made at any auction or public competition for the support, care or maintenance of any such poor persons, shall be absolutely void.

CHAP. 327.

AN ACT to require superintendents of the poor to give bonds.

PASSED April 12, 1848.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. Every person hereafter elected to the office of superintendent of the poor, shall, within ten days after his election, give a bond to the supervisors, with two or more sufficient sureties, to be approved by the board of supervisors, and in such sum as they shall direct, conditioned that such person shall faithfully execute the duties of his office, and shall pay according to law all moneys which shall come to his hands, as superintendent of the poor, and render a just and true account thereof to the board of supervisors. Bond to be executed.

§ 2. Such bond with the approbation of the board of supervisors, endorsed thereon by their clerk, shall be filed in the office of the county clerk. And filed.

§ 3. This act shall not apply to the city of New York.

CHAP. 116.

AN ACT to extend the time for county superintendents of the poor, elected in November, 1848, to execute and file their official bond and to take the oath of office.

PASSED March 21, 1849.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 4. Superintendents of the poor hereafter to be elected at any annual election, shall enter on the duties of their office on the first day of January next after such election. When to enter on their duties hereafter.

CHAP. 12.

AN ACT to extend the time for county superintendents of the poor elected in November, 1849, to take the oath of office and file their official bond.

PASSED February 6, 1850.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 4. Superintendents of the poor, hereafter to be elected, may have until the first day of January next after the election, to take the oath of office and file their official bond. Time of filing bond.

PART I. 4
Penalty of
bonds to be
fixed by su-
pervisor.

§ 5. It shall be the duty of the board of supervisors of the several counties to fix the penalty of the bonds of superintendents of the poor, at their next annual session; and the sureties may be approved by the county clerk, in the recess of the board of supervisors.

CHAP. 532.

AN ACT in relation to the duties of Superintendents of the Poor.

PASSED July 11, 1851.

The People of the State of New York, represented in Senate and Assembly, do enact as follows :

Keeper and
physician.

§ 1. In each county where there is more than one superintendent of the poor, and where there is a poor house, the superintendents shall appoint a keeper and physician for the poor house.

7 How. P. R., 255.

CHAP. 188.

AN ACT relating to county superintendents of the poor.

PASSED April 10, 1854.

The People of the State of New York, represented in Senate and Assembly, do enact as follows :

Term of
office when
only one in
a county.

§ 1. In any county in this state, in which the board of supervisors is authorized by law to direct by resolution that thereafter only one county superintendent of the poor should or shall be elected in and for such county, and has so directed or may hereafter so direct, the person elected as superintendent of the poor of such county, at the election of such officer next after the passage of such resolution, shall be and is superintendent of the poor of such county, to hold his office for three years from the first day of January next after his election; and at the general election next preceding the expiration of his said term, and triennially thereafter, one superintendent of the poor shall be elected in and for such county.

Unexpired
term of the
others.

§ 2. In any county having more than one superintendent of the poor in office at the time of the passage of such resolution, heretofore or hereafter, as specified in the preceding section, the passage of such resolution shall not be deemed to affect the then unexpired terms of such superintendents; but the place of those then having one or two years yet to serve, whenever vacated by death, resignation or expiration of their term, or otherwise, shall not be filled either by appointment or election.

CHAP. 159.

AN ACT to allow the trustees, directors, or managers of incorporated asylums, to bind out orphans or indigent children surrendered to their care.

PASSED April 5, 1855.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. The trustees, directors, or managers of any incorporated orphan asylum, may bind out any orphan or indigent child if a male, under the age of twenty-one years, or if a female, under the age of eighteen years, which has been or shall be surrendered to the care and custody of said society by the parent or guardian thereof, or placed therein by the superintendent of the poor of the county, or the overseers of the poor of any city or town in the county within which said asylum is located, to be clerks, apprentices or servants, until such child, if a male, shall be twenty-one years old, or if a female, shall be eighteen years old, which binding shall be as effectual as if such child had bound himself with the consent of his father.

Trustees
may bind
out chil-
dren.

§ 2. In case of the death of the father of any indigent child, or in case the father shall have abandoned his family or neglected to provide for them, the mother shall be the guardian of said child for the purpose of surrendering the said child to the care and custody of said society; and in case of the death of both parents, the mayor of the city within which the said asylum may be located, shall be, ex officio, the guardian of said child, for the purpose of enabling said trustees, managers or directors, to bind out such child.

Mother
when the
guardian of
child.

§ 3. The provisions of sections eight, nine and ten, of article first of title fourth of chapter eight of part second of the Revised Statutes, shall apply to all cases of binding under this act.

Rev. Stat.
extended.

CHAP. 269.

AN ACT requiring overseers of the poor of the several towns of this state to give bonds.

PASSED April 10, 1855.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. Every person hereafter elected or appointed to the office of overseer of the poor in the several towns of this state, within ten days after being notified of his election or appointment, shall execute to the supervisor of the town, a

Overseer to
give bond.

PART I.

bond, with one or more sureties, to be approved by such supervisor, conditioned that he will faithfully discharge the duties of his office, and will pay according to law all moneys which shall come into his hands as such overseer.

To be filed.

§ 2. Such bond, with the approval of the supervisor endorsed thereon, shall, within five days thereafter, be filed in the office of the town clerk of such town.

CHAP. 61.

AN ACT in relation to orphan and destitute children.

PASSED March 2, 1857.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Duty of superintendents of poor.

§ 1. It shall be lawful for the superintendents of the poor, in counties in which there shall be no orphan asylum, and the overseers of the poor of towns in such counties, to place the children, chargeable to and supported at the expense of such counties or towns, in any incorporated orphan asylum in any county of the state, upon such terms as shall be agreed upon with the managers or trustees of said asylum, at the proper expense of the counties or towns to which they are properly chargeable.

Duty of managers of orphan asylums.

§ 2. It shall be the duty of the managers of every orphan asylum or other institution authorised to receive and bind out orphan or destitute children, to provide and keep always open for the inspection of all desiring to examine it, a book, in which shall be registered the names, age and parentage, as near as the same can be ascertained, of all children committed to their care or received into such institution, in which book or register shall also be written the time such child left the institution, and if bound out or otherwise, placed out at service, or on trial, the name and occupation of the person with whom it is so placed and his or her place of residence. The managers shall have no power to bind out any person mentioned in the first section.

Act of 1855 made applicable.

§ 3. All the provisions of chapter one hundred and fifty-nine of the laws of eighteen hundred and fifty-five, shall apply to the children provided for in this act.

CHAP. 298.

AN ACT in relation to superintendents of the poor.

PASSED April 17, 1862; three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Power of supervisors to increase the number.

§ 1. Section one of chapter four hundred and ninety-eight of the laws of eighteen hundred and forty-seven, passed De-

ember sixteen, eighteen hundred and forty-seven, is hereby amended by adding thereto the following: And after the board of supervisors of any county shall have, by resolution, directed that only one superintendent of the poor shall be elected in and for such county, the said board may, at any annual meeting thereof, revoke such resolution, and may, by resolution, direct that thereafter three superintendents of the poor shall be elected in and for such county. The superintendent of the poor who shall be in office at the time of the adoption of the resolution hereby authorized, shall hold his office (subject to all provisions of law) until the expiration of the term of office for which he was elected. If the term of office of such superintendent will expire on the thirty-first day of December of the same year of the adoption of said resolution, then three superintendents of the poor for said county shall be elected at the next general election, whose term of office respectively shall be determined in accordance with the provisions of section three of said chapter four hundred and ninety-eight. If the term of office of the superintendent of the poor in office at the time of the adoption of said resolution will not expire during the year of the adoption of said resolution, then, at the general election to be held next thereafter, there shall be elected two superintendents of the poor for said county, and their term of office shall be determined in accordance with the provisions of section three of chapter four hundred and ninety-eight of the laws of eighteen hundred and forty-seven, but for such term that the terms of the three superintendents of the poor shall so expire that one of them shall be to be filled at each annual election thereafter. In any county where such resolution has been already adopted, there shall be elected annually thereafter, at the general election in each year, one county superintendent of the poor, who shall hold his office for three years; and, in each of the counties of this state having a county poor house, the superintendent of the poor of such counties, or superintendents, if there be more than one, shall appoint a keeper or keepers of such county poor house, and shall have full power, at any time, to remove any keeper and appoint another in his stead. And if the keeper of any such poor house shall neglect or refuse to leave the same, or surrender to the superintendent or superintendents the possession of the same, when such possession is demanded, the said superintendent or superintendents shall have power and are hereby authorized to proceed against said keeper in his or their name of office, and to remove said keeper from such poor house by summary proceedings, in the same manner as is provided by article second of chapter eight of part third of the Revised Statutes, entitled "Summary proceedings to recover possession of land in other cases," so far as the same are applicable, except that it shall only be necessary for the superintendent to set forth in his

Election of
superinten-
dents.

Term of
office.

To appoint
keeper.

Power to
remove
keeper.

Warrant of
removal.

PART I.

affidavit, or prove upon the hearing the following facts, to entitle him to the warrant of removal.

1. That the party commencing the proceedings is the superintendent or superintendents of the poor of the county.

2. That the county has a county poor house, and that the keeper is in possession of such poor house, or living therein, and that he refuses to surrender up the possession of such poor house, or remove from the same, after the possession shall have been demanded by such superintendent of the poor.

Saving
clause.

But nothing in this act shall affect the tenure of office of any present incumbent.

CHAP. 185.

AN ACT to provide for the care and instruction of idle and truant children.

PASSED April 12, 1853.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Children
when to be
taken up.

§ 1. If any child between the ages of five and fourteen years, having sufficient bodily health and mental capacity to attend the public schools, shall be found wandering in the streets or lanes of any city or incorporated village, idle and truant, without any lawful occupation, any justice of the peace, police magistrate or justices of the district courts in the city of New York, on complaint thereof by any citizen on oath shall cause such child to be brought before him for examination, and shall also cause the parent, guardian or master of such child, if he or she have any, to be notified to attend such examination. And if on such examination the complaint shall be satisfactorily established, such justice shall require the parent, guardian or master to enter into an engagement in writing, to the corporate authorities of the city or village, that he will restrain such child from so wandering about, will keep him or her on his own premises, or in some lawful occupation, and will cause such child to be sent to some school at least four months in each year, until he or she becomes fourteen years old. And such justice may, in his discretion, require security for the faithful performance of such engagement. If such child has no parent, guardian or master, or none can be found, or if such parent, guardian or master refuse or neglect, within a reasonable time, to enter into such engagement, and to give such security, if required, such justice shall, by warrant under his hand, commit such child to such place as shall be provided for his or her reception, as hereinafter directed.

Penalty for
violating
engage-
ment.

§ 2. If such engagement be habitually or intentionally violated, an action may be brought thereon, by the overseers of the poor or either of them, of such city or village, in the

name of the corporate authorities thereof, and on proof of such habitual or intentional violation, the plaintiff shall recover therein a penalty of not more than fifty dollars, with costs. And thereupon, the magistrate or court before whom such recovery shall be had, shall, by warrant, commit such child to the place so provided for his or her reception, as aforesaid.

§ 3. The corporate authorities of every city and incorporated village shall provide some suitable place for the reception of every child that may be so committed, and for the employment of such child in some useful occupation, and his or her instruction in the elementary branches of an English education, and for his or her proper support and clothing. Every child so received shall be kept in such place until discharged by the overseers of the poor or the commissioners of the alms-house of such city or village, and may be bound out as an apprentice by them or either of them, with the consent of any justice of the peace or any of the aldermen of the city, or any trustee of the incorporated village where he may be, in the same manner, for the same periods, and subject to the same provisions in all respects, as are contained in the first article and fourth title of the eighth chapter and second part of the Revised Statutes, with respect to children whose parents have become chargeable on any city or town.

Place of reception, and useful occupation to be provided for children.

§ 4. The expenses of providing and maintaining such place for the reception, clothing, support and instruction of such children, shall be defrayed in the same manner as charges for the support of paupers chargeable upon such city or village; and the corporate authorities of every city and village shall certify to the board of supervisors of the county, at their annual meetings, the amount necessary for said purposes, which amount the said supervisors shall cause to be levied and collected as part of the taxes for the support of the poor, chargeable to such city or village.

Expenses, how paid.

§ 5. It shall be the duty of all police officers and constables, who shall find any child in the condition described in the first section of this act, to make complaint to a justice of the peace, as provided in the said section.

Complaint to be made by constable.

§ 6. The fees of justices for services performed under this act shall be the same as allowed by law in cases of vagrancy, and shall be paid by the city or village in which they were rendered.

Justices' fees.

CHAP. 135.

AN ACT to organize the State Lunatic Asylum, and more effectually to provide for the care, maintenance and recovery of the insane.

PASSED April 7, 1842.

The People of the State of New York, represented in Senate and Assembly, do enact as follows :

Managers
of asylum.

First class.

Second
class.

Third class.

Board to
have gener-
al control of
property.

To appoint
a superin-
tendent.

Managers
to fix sala-
ries of trea-
surer and

§ 1. Nicholas Devereaux, Jacob Sutherland, Charles A. Mann, Alfred Munson, Charles B. Coventry, Abraham V. Williams, Thomas H. Hubbard, T. Romeyn Beck and David Buel, are hereby appointed managers of the State Lunatic Asylum; and shall hold their offices as follows: The said Nicholas Devereaux, Jacob Sutherland, and Charles Mann, shall hold their offices for one year; the said Alfred Munson, Charles B. Coventry, and Abraham V. Williams, shall hold their offices for two years; and the said Thomas H. Hubbard, T. Romeyn Beck and David Buel, shall hold their offices for three years; and they shall hold their offices until others are appointed in their stead, subject to be removed at any time by the senate, upon the recommendation of the Governor. Their successors shall be appointed by the senate, upon the nomination of the Governor, and shall hold their offices for three years, and until others are appointed in their stead, and subject to be removed in the manner aforesaid. The government of the State Lunatic Asylum shall be vested in the said board of managers, and a majority thereof shall reside within five miles of said asylum.

§ 2. Said board shall have the general direction and control of all the property and concerns of the institution not otherwise provided for by law, and shall take charge of its general interests, and see that its great design be carried into effect, and every thing done faithfully according to the requirements of the legislature, and the by-laws, rules and regulations of the asylum.

§ 3. The managers shall appoint a superintendent, who shall be a well educated physician, and a treasurer, who shall reside in the city of Utica, and give bonds for the faithful performance of his trust, in such sum and with such sureties as the comptroller of the state shall approve. They shall also appoint, upon the nomination of the superintendent, a steward, an assistant physician and a matron, all of whom, and the superintendent himself, shall constantly reside in the asylum, and shall be designated the resident officers thereof.

See Laws of 1844, ch. 337.

§ 4. The managers shall, from time to time, determine the annual salaries and allowances of the treasurer and resident officers of the asylum, who have been or may hereafter be

appointed, subject to the approval of the governor of the state, secretary of state, and the comptroller; provided, that such salaries shall not exceed, in the aggregate, eight thousand dollars for any one year.

Thus amended by Laws of 1860, ch. 450.

§ 5. The salaries of the treasurer and resident officers of the asylum shall be paid quarterly, on the first days of January, April, July and October, in each year, by the treasurer of the state, on the warrant of the comptroller, out of any moneys in the treasury not otherwise appropriated, to the treasurer of the asylum, on his presenting a bill of particulars signed by the steward and certified by the superintendent.

To be paid
quarterly.

§ 6. The managers may take and hold, in trust for the state, any grant or devise of land or any donation or bequest of money or other personal property, to be applied to the maintenance of insane persons and the general use of the State Lunatic Asylum.

Grants
devises,
&c., may be
held in
trust.

§ 7. The treasurer and resident officers of the asylum, before entering upon their respective duties, shall severally take the oath prescribed in the first section of the sixth article of the constitution of the state, and such oath shall be filed with the clerk of the county of Oneida.

Oath of
office.

§ 8. The managers are hereby directed and empowered to establish such by-laws as they may deem necessary and expedient for regulating the appointment and duties of officers, attendants and assistants, for fixing the conditions of admission, support and discharge of patients, and for conducting in a proper manner the business of the institution; also, to ordain and enforce a suitable system of rules and regulations for the internal government, discipline and management of the asylum.

Managers
may estab-
lish by-
laws.

§ 9. The superintendent shall be the chief executive officer of the asylum. He shall have the general superintendence of the buildings, grounds and farms, together with their furniture, fixtures and stock; and the direction and control of all persons therein, subject to the laws and regulations established by the managers. He shall daily ascertain the condition of all the patients and prescribe their treatment in the manner directed in the by-laws. He shall have the nomination of his co-resident officers, with power to assign them their respective duties, subject to the by-laws; also to appoint with the managers' approval, such and so many other officers, assistants and attendants, as he may think proper and necessary for the economical and efficient performance of the business of the asylum, and to prescribe their several duties and places, and to fix, with the managers' approval, their compensation, and to discharge any of them at his sole direction; but in every case of discharge he shall forthwith record the same with the reasons, under an appropriate head, in one of the books of the asylum. He shall also have power to suspend, until the next monthly meeting of the managers, for good and sufficient

Powers and
duties of
superinten-
dent.

PART I.

cause, a resident officer; but in such case he shall forthwith give written notice of the fact, with its causes and circumstances, to one of the managers, whose duty thereupon shall be to call a special meeting of the board to provide for the exigency. He shall also, from time to time, give such orders and instructions as he may judge best calculated to ensure good conduct, fidelity and economy in every department of labor and expense; and he is authorized and enjoined to maintain salutary discipline among all who are employed by the institution, and to enforce strict compliance with such instructions, and uniform obedience to all the rules and regulations of the asylum. He shall further cause full and fair accounts and records of all his doings, and of the entire business and operations of the institution, to be kept regularly, from day to day, in books provided for that purpose, in the manner and to the extent prescribed in the by-laws; and he shall see that all such accounts and records are fully made up to the last day of November in each year, and that the principal facts and results, with his report thereon, be presented to the managers within thirty days thereafter. The assistant physician shall perform the duties, and be subject to the responsibilities of the superintendent in his sickness or absence.

In his
absence.

Privileges
of officers.

§ 10. The resident officers of the State Lunatic Asylum, and all attendants and assistants actually employed therein, during the time of such employment shall be exempt from serving on juries, from all assessments for labor on the highways, and in time of peace, from all service in the militia; and the certificate of the superintendent shall be evidence of the fact of such employment.

Managers
to keep re-
cord of their
doings.

§ 11. The managers shall keep, in a bound book to be provided for that purpose, a fair and full record of all their doings, which shall be open at all times to the inspection of the governor of the state, and of all persons whom he, or either house of the legislature may appoint to examine the same.

Inspection
and visita-
tion of
asylum.

§ 12. The managers shall maintain an effective inspection of the asylum; for which purpose, one of them shall visit it every week, two once every month, a majority once every quarter, and the whole board once a year, at the times and in the manner prescribed in the by-laws. In a book kept by the managers for this purpose, the visiting manager or managers shall note the date of each visit, the condition of the house, patients, &c., with remarks of commendation or censure, and all the managers present shall sign the same. The general results of these inspections, with suitable hints, shall be inserted in the annual report, detailing the past year's operations and actual state of the asylum, which the managers shall make to the legislature in the month of January in each year, accompanied with the annual reports of the superintendent and treasurer.

Officers to
admit man-
agers into

§ 13. It shall be the duty of the resident officers to admit any of the managers into every part of the asylum, and to

CHAP. XX.
every part
of asylum.

exhibit to him or them, on demand, all the books, papers, accounts, and writings belonging to the institution, or pertaining to its business, management, discipline, or government; also, to furnish copies, abstracts, and reports, whenever required by the managers.

Duty of
treasurer.

§ 14. The treasurer shall have the custody of all moneys, bonds, notes, mortgages, and other securities and obligations belonging to the asylum. He shall open, with one of the banks in Utica, to be selected with the approbation of the comptroller of the state, an account in his own name, as treasurer of the asylum; and he shall deposit all moneys immediately upon receiving them in said bank, and shall draw for the same only for the uses of the asylum, and in the manner prescribed in the by-laws, upon the written order of the steward, specifying the object of the payment. He shall keep full and accurate accounts of receipts and payments, in the manner directed in the by-laws, and such other accounts as the managers shall prescribe. He shall balance all the accounts on his books annually, on the last day of November, and make a statement of the balances thereon, and an abstract of the receipts and payments of the past year; which he shall, within three days, deliver to the auditing committee of the managers, who shall compare the same with his books and vouchers, and verify the results by a further comparison with the books of the steward, and certify the correctness thereof, within the next five days, to the managers. He shall further render a quarterly statement of his receipts and payments, on the first days of March, June, and September in each year, to the auditing committee, who shall compare and verify the same as aforesaid, and report the results, duly certified, to the managers, who shall cause the same to be recorded in one of the books of the asylum. He shall further render an account of the state of his books, and of the funds and other property in his custody, whenever required so to do by the managers.

Treasurer
to have the
same power
as superin-
tendents
and over-
seers of
the poor, in
certain
cases.

§ 15. The treasurer of the State Lunatic Asylum shall be vested with the same powers, rights and authority which are now by law given, either to superintendents of the poor or to overseers of the poor, in any county or town of the state, so far as may be necessary for the indemnity and benefit of the asylum, and for the purpose of compelling a relative or committee to defray the expenses of a lunatic's support in the asylum, and reimburse actual disbursements for his necessary clothing and travelling expenses, according to the by-laws of the institution; also for the purpose of coercing the payment of similar charges when due, according to said by-laws, from any town or city or county that is liable for the support of any lunatic in said asylum.

Authorized
to recover
all sums
due to asy-
lum.

§ 16. Said treasurer is also authorized to recover, for the use of the asylum, any and all sums which may be due upon any note or bond in his hands belonging to the asylum; also any and all sums which may be charged and due, according

PART I.

to the by-laws of the asylum, for the support of any patient therein, or for actual disbursements made in his behalf, for necessary clothing and travelling expenses, in an action to be brought in said treasurer's name, as treasurer of the State Lunatic Asylum, and which shall not abate by his death or removal, against the individual, town, city or county legally liable for the maintenance of said patient, and having neglected to pay the same when demanded by the treasurer; in which action, the declaration may be in a general indebitatus assumpsit; and judgment shall be rendered for such sum as shall be found due, with interest from the time of the demand made as aforesaid. Said treasurer may also, upon the receipt of the money due upon any mortgage in his hands, belonging to the asylum, execute a release, and acknowledge full satisfaction thereof, so that the same may be discharged of record.

Powers and
duty of the
steward.

§ 17. The steward, under the direction of the superintendent, shall make all purchases for the asylum, and preserve the original bills and receipts thereof, and keep full and accurate accounts of the same, and copies of all orders drawn by himself upon the treasurer; he shall also, under like direction, make contracts in the superintendent's name, with the attendants and assistants, and keep and settle their accounts; he shall also keep the accounts for the support of patients, and expenses incurred in their behalf, and furnish the treasurer every month with copies of such as fall due; he shall make quarterly abstracts of all his accounts to the last day of every February, May, August, and November, for the treasurer and managers; he shall also be accountable for the careful keeping and economical use of all furniture, stores, and other articles provided for the asylum; and shall annually, during the third week in November, make out and file with the managers a true and perfect inventory, verified by oath, of all the personal property belonging to the asylum, in and about the premises, with an appraisal thereof, made under oath, by himself and some discreet householder of the city of Utica, whom the managers shall appoint for that purpose.

Notice to be
given when
asylum is
ready for
patients.

§ 18. As soon as the asylum shall be ready for the admission of patients, the managers shall cause notice thereof to be published for two weeks in the state paper, and sent to the clerk of every county, who shall transmit copies thereof, to the superintendents of the poor of said county, by mail. A circular from the superintendent shall accompany said notice to each county clerk, and to the superintendents of the poor, designating different days for the counties severally to send to the asylum their respective quotas of patients, and giving all necessary directions respecting admission and support, according to the by-laws.

[Section 19 repealed by Laws of 1843, ch. 224.]

Lunatics
when to be
sent to asy-
lum in cases
hereafter
occurring.

§ 20. In every case of lunacy hereafter occurring and provided for by Title three, Chapter twenty, Part first, of the Revised Statutes, the lunatic shall be sent within ten days to

the State Lunatic Asylum, or "to such public or private asylum as may be approved by a standing order or resolution of the supervisors of the county;" and the provisions of said Title three, allowing other places of confinement beyond ten days, are hereby repealed. The superintendents and overseers of the poor named in the several sections of said Title three, are severally enjoined to see that this provision be carried into effect in the most humane and speedy manner; as well in case the lunatic or his relatives are of sufficient ability to defray the expenses, as in case of a pauper.

5 B., 276.

§ 21. If any lunatic confined under the statute, Title three, last aforesaid, or any friend in his behalf, be dissatisfied with any final decision or order of the justices, or of any overseer or superintendent of the poor; under such statute, he may, within three days after such order or decision, appeal to one of the judges of the county, making complaint on oath, and such judge shall thereupon stay his being sent out of the county, and forthwith call a jury to decide upon the fact of lunacy; after a full and fair investigation, aided by the testimony of two respectable physicians, if such jury find him sane, the judge shall forthwith discharge him, otherwise he shall confirm the order for his being immediately sent to an asylum. In case the justices refuse to make an order for confinement they shall state their reasons for such refusal in writing, so that any person aggrieved thereby may appeal, as above, to a county judge, who shall hear and determine the matter in a summary way, or call a jury, as he may think most fit and proper. In every case of appeal the judge shall have the same power to take testimony and compel the attendance of witnesses and jurors, as a justice has in civil cases.

Appeal may be made from order of justice or overseer.

5 B., 273.

§ 22. In every case of "confinement" under the statute, Title three, last aforesaid, whether of a pauper or not, after the passage of this act, neither justices, superintendents, or overseers of the poor, shall order or "approve" of such confinement, without having the evidence of two reputable physicians, under oath, as to the alleged fact of insanity; and such testimony shall be reduced to writing and filed, with a brief report of all the other proofs, facts and proceedings in the case, in the office of the county clerk; and said clerk shall file said papers and register with date, the names and residence of the lunatic and officers severally, in tabular form, in the book of miscellaneous records, kept in said office; and the certificate of said clerk, and seal of the court, verifying such facts, shall warrant such lunatic's admission into the asylum.

Confinement not to be ordered or approved of until insanity is proved.

31 B., 473.

§ 23. All lunatics whose confinement under the said statute, Title three, is in a jail, or has commenced since the last day

Provision as to lunatics con-

PART I.
fined in a
jail.

of December, eighteen hundred and forty, (except those whose mental derangement is upon the testimony under oath of two respectable physicians, manifestly incurable, or whose bodily infirmities indicate the approach of speedy dissolution,) and who are not already under special resolution of the supervisors as aforesaid, in some other approved asylum, shall be sent to the State Lunatic Asylum, within such time and under such regulations as shall be prescribed by the by-laws, after the asylum shall be open for the reception of patients. Superintendents of the poor, and all persons having the care of such lunatics, shall see to carrying this into effect.

Names, &c.
of persons
bringing
lunatics to
be recorded.

§ 24. The superintendent shall make, in a book kept for the purpose, at the time of reception, a minute with date of the name, residence, office and occupation of the person by whom, and by whose authority, each insane person is brought to the asylum, and have all the orders, warrants, requests, certificates and other papers accompanying him, forthwith copied into the same.

Number of
patients al-
lowed to
each coun-
ty.

§ 25. Each county may at all times have one indigent insane patient in the asylum, whose disease at the time of admission was a first attack, and did not exceed six months; and such further number of either old or recent cases as the asylum can accommodate, in proportion to the insane population of the county. The patients shall be designated by the superintendents of the poor, or if the county has no such superintendents, by the first judge.

Certain in-
digent per-
sons not
paupers to
be admit-
ted.

§ 26. When a person in indigent circumstances, not a pauper, becomes insane, application may be made in his behalf to the first judge of the county where he resides; and said judge shall call two respectable physicians and other credible witnesses, and fully investigate the facts of the case, and either with or without the verdict of a jury, at his discretion, as to the question of insanity, shall decide the case as to his indigence. And if the judge certifies that satisfactory proof has been adduced showing him insane, and his estate is insufficient to support him and his family, (or if he has no family, himself,) under the visitation of insanity, on his certificate, authenticated by the county clerk and seal of the county courts, he shall be admitted into the asylum and supported there at the expense of said county, until he shall be restored to soundness of mind, if effected in two years. The judge, in such case, shall have requisite power to compel the attendance of witnesses and jurors, and shall file the certificate of the physicians, taken under oath, and other papers, with a report of his proceedings and decision, with the clerk of the county, and report the facts to the supervisors, whose duty it shall be, at their next annual meeting to raise the money requisite to meet the expenses of support accordingly.

7 H., 171. See Laws of 1850, ch. 282, and 1857, ch. 650.

Counties to
support
such per-

§ 27. When an insane person in indigent circumstances shall have been sent to the asylum by his friends, who have

CHAP. XX.
sons after
six months.

paid his bills therein for six months, if the superintendent shall certify that he is a fit patient and likely to be benefited by remaining in the institution, the supervisors of the county of his residence are authorized and required, upon an application under oath in his behalf, to raise a sum of money sufficient to defray the expenses of his remaining there another year, and pay the same to the treasurer of the asylum. And they shall repeat the same for two succeeding years, upon like application and the production of a new certificate each year, of like import from the superintendent.

§ 28. No patient shall be admitted into the asylum for a shorter period than six months, except in special cases as specified in the by-laws. Term of admission.

§ 29. Whenever there are vacancies in the asylum, the managers may authorize the superintendent to admit, under special agreements, such recent cases, as may seek admission under peculiarly afflictive circumstances, or which, in his opinion, promise speedy recovery. Vacancies.

§ 30. All town and county officers sending a patient to the asylum, shall, before sending him, see that he is in a state of perfect bodily cleanliness and is comfortably clothed, and provided with suitable changes of raiment, as prescribed in the by-laws. Bodily cleanliness and clothing of patients.

§ 31. When a person shall have escaped indictments or shall have been acquitted of a criminal charge upon trial, on the ground of insanity, the court being certified by the jury or otherwise, of the fact, shall carefully inquire and ascertain whether his insanity in any degree continues, and if it does, shall order him in safe custody, and to be sent to the asylum. If such person be sent to the asylum, the county from which he is sent shall defray all his expenses while there, and of sending him back if returned; but the county may recover the amount so paid, from his own estate if he have any, or from any relative, town, city or county that would have been bound to provide for and maintain him elsewhere. Provisions as to persons acquitted after trial, on the ground of insanity.

§ 32. If any person in confinement, under indictment or under sentence of imprisonment, or under a criminal charge, or for want of bail for good behavior, or for keeping the peace, or for appearing as a witness, or in consequence of any summary conviction, or by order of any justice, or under any other than civil process, shall appear to be insane, the first judge of the county where he is confined, or if the first judge be absent from the county, any county judge of the degree of counsellor of the supreme court, shall institute a careful investigation, call two respectable physicians and other credible witnesses, invite the district attorney to aid in the examination, and if he deem it necessary, call a jury, and for that purpose is fully empowered to compel the attendance of witnesses and jurors; and if it be satisfactorily proved that he is insane, said judge may discharge him from imprisonment and order his safe custody and removal to the asylum, where he shall As to persons in confinement or under sentence of imprisonment, &c.

PART LI

remain until restored to his right mind; and then, if the said judge shall have so directed, the superintendent shall inform the said judge and the county clerk and district attorney thereof, so that the person so confined may within sixty days thereafter, be remanded to prison, and criminal proceedings be resumed, or otherwise discharged; or if the period of his imprisonment shall have expired he shall be discharged. The provisions of the last preceding section requiring the county to defray the expenses of a patient sent to the asylum, shall be equally applicable to similar expenses arising under this section and the one next following.

As to persons imprisoned on attachment, &c

§ 33. If a person imprisoned on attachment, or any civil process, or for the non-payment of a militia fine, becomes insane, one of the judges mentioned in the last preceding section of this act, shall institute like proceedings in his case as are required in the case provided for in said section; but notice shall in such case be given by mail or otherwise, to the plaintiff or his attorney, if in the state; and if it shall be proved to the satisfaction of said judge that the prisoner is insane, he may discharge him from imprisonment and order him into safe custody and to be sent to the asylum; nevertheless, the creditor may renew his process and arrest again his debtor when of sound mind.

4 N. Y., 300.

Persons charged with misdemeanor.

§ 34. Persons charged with misdemeanors and acquitted on the ground of insanity, may be kept in custody and sent to the asylum, in the same way as persons charged with crime.

Price for keeping the poor and indigent.

§ 35. The price to be paid for keeping the poor, or any persons, in indigent circumstances, in the asylum, until the first day of April, eighteen hundred and forty-three, shall be two dollars and fifty cents per week; thereafter it shall be annually fixed by the managers and shall not exceed the actual cost of support and attendance, exclusive of officer's salaries. But the managers may reduce the price if they think proper, in behalf of one indigent patient from each county, if admitted within six months of the first attack of the disease, for one year, unless sooner cured. The managers may, at their discretion, require payments after the first of December next, to be made quarterly or semi-annually, in advance.

Liability of persons supported.

§ 36. Every insane person supported in the asylum shall be personally liable for his maintenance therein, and for all necessary expenses incurred by the institution in his behalf. And the committee, relative, town, city, or county that would have been bound by law to provide for and support him if he had not been sent to the asylum, shall be liable to pay the expenses of his clothing and maintenance in the asylum, and actual necessary expenses to and from the same.

7 H., 171.

Certain patients to be supported

§ 37. The expenses of clothing and maintaining, in the asylum, a patient who has been received upon the order of

any court, or officer, shall be paid by the county from which he was sent to the asylum. The treasurer of said county is authorized and directed to pay to the treasurer of the asylum, the bills for such clothing and maintenance, as they shall become due and payable, according to the by-laws of the asylum, upon the order of the steward; and the supervisors of said county shall annually levy and raise the amount of such bills, and such further sums as will probably cover all similar bills for one year in advance. Said county, however, shall have the right to require any individual, town, city, or county that is legally liable for the support of such patient, to reimburse the amount of said bills, with interest from the day of paying the same.

7 H., 171.

§ 38. Whenever the managers shall order a patient removed from the asylum to the poor house of the county whence he came, the superintendent of the poor of said county shall audit and pay the actual and reasonable expenses of such removal as part of the contingent expenses of said poor house. But if any town or person be legally liable for the support of such patient, the amount of such expenses may be recovered for the use of the county, by such superintendents. If such superintendents of the poor neglect or refuse to pay such expenses, on demand, the treasurer of the asylum may pay the same and charge the amount to the said county; and the treasurer of the said county is authorized to pay the same, with interest after thirty days; and the supervisors of the said county shall levy and raise the amount as other county charges.

Expense of
removing
certain pa-
tients how
paid.

§ 39. Every town or county paying for the support of a lunatic in the asylum, or his expenses in going to or from the same, shall have the like rights and remedies to recover the amount of such payments, with interest from the time of paying each bill, as if such expenses had been incurred for the support of the same, at other places, under existing laws.

Expense of
supporting
lunatics
how recov-
ered.

7 H., 171.

§ 40. None of the provisions of this act shall restrain or abridge the power and authority of the chancellor of the state, over the persons and property of the insane.

Powers of
chancellor.

§ 41. The managers, upon the superintendent's certificate of complete recovery, may discharge any patient, except one under a criminal charge or liable to be remanded to prison; and they may discharge any patient admitted as "dangerous," or any patient sent to the asylum by the superintendent or overseers of the poor, or by the first judge of a county, upon the superintendent's certificate, that he or she is harmless and will probably continue so, and not likely to be improved by further treatment in the asylum, or where the asylum is full, upon a like certificate, that he or she is manifestly incurable, and can probably be rendered comfortable at

Patients
when to be
discharged.

PART I.

the poor-house; so that preference may be given, in the admission of patients, to recent cases, or cases of insanity of not over one year's duration. They may discharge and deliver any patient, except one under criminal charge as aforesaid, to his relatives or friends, who will undertake with good and approved sureties for his peaceable behavior, safe custody and comfortable maintenance, without further public charge.

So amended by Laws of 1844, ch. 337.

Patients of
the criminal
class.

§ 42. A patient of the criminal class may be discharged by order of one of the justices of the supreme court, or a circuit judge, if upon due investigation it shall appear safe, legal and right to make such order.

Patients
discharged
to be suit-
ably clothed.

§ 43. No patient shall be discharged without suitable clothing; and if it can not be otherwise obtained, the steward shall, upon the order of two managers, furnish it, also money not exceeding twenty dollars, to defray his necessary expenses until he reaches his friends, or can find a chance to earn his subsistence.

Assessors
to ascertain
the number
of insane
persons
yearly.

§ 44. It shall be the duty of the assessors in each town and ward in the state, every year, to make diligent inquiry, and ascertain with accuracy the number and names of all insane persons in said town or ward, and to make a list of the same with the best account they can get, in each case of the patient's age, general health, habits and occupation, kind, degree and duration of insanity, and pecuniary ability of self and relatives liable for his support. They shall send this list, with all the facts brought down to the latest period, to the clerk of the county, by the first day of August; who shall carefully condense the facts exhibited, and mail the same to the treasurer of the asylum at Utica, without delay. No county clerk shall receive any compensation for any services performed under this act.

[Section 45 temporary.]

Meaning of
terms used
in this act.

§ 46. The terms "lunacy," "lunatic" and "insane," as used in this act, include every species of insanity, and extend to every deranged person, and to all of unsound mind other than idiots; the word "oath" includes "affirmation;" the words "justice" and "justices" mean "justice of the peace," "justices of the peace;" the word "overseer" means "overseer of the poor," and "county superintendent" means "superintendent of the poor;" the word "asylum" and "institution" means "State Lunatic Asylum;" a word denoting the singular number is to include one or many; and every word importing the masculine gender only may extend to, and include females.

Expenses of
managers
to be paid.

§ 47. The managers of the State Lunatic Asylum shall receive no compensation for their services, but shall receive their actual and reasonable travelling and other expenses, to be paid on the warrant of the comptroller, on the rendering of their accounts.

CHAP. XX.
All purchases to be made for cash.

§ 48. All purchases for the use of the asylum shall be made for cash, and not on credit, or time; every voucher shall be taken duly filled up at the time it is taken, with every abstract of vouchers for money paid shall be proof on oath that the voucher was filled up and the money paid therefor at the time the voucher was taken; and the managers shall make all needful rules and regulations to enforce the provisions of this section.

§ 49. If the managers shall find that the funds at their command will prove insufficient to carry on the asylum, they may apply to the Governor, Secretary of State, Comptroller, and Attorney-General, specifying the purchases to be made, and if the Governor, Secretary of State, Comptroller and Attorney-General shall be of opinion that the purchases are necessary, they may make an order that a sum not exceeding five thousand dollars in any one year be advanced to the managers by the Comptroller out of any money in the treasury not otherwise appropriated.

In case of deficiency of funds money may be advanced

§ 50. So much of the fourth section of the act to authorize the establishment of the New York State Lunatic Asylum, passed March 30, 1836, as provides for the appointment of three commissioners, is hereby abolished; all the powers conferred upon said commissioners by said act, or any subsequent act of the legislature, are hereby conferred upon the managers appointed by this bill.

Powers under act of 1836.

§ 51. This act shall take effect immediately except its requirements for sending the insane to the asylum, which shall take effect as soon as the managers' notice of the asylum being ready as aforesaid, shall have been published for two weeks in the state paper.

Act when to take effect.

CHAP. 98.

AN ACT in relation to the State Lunatic Asylum.

PASSED April 22, 1846.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

[Sections 1, 2, 3, temporary.]

§ 4. The managers of said asylum shall have the power, on the nomination of the superintendent of said asylum, to appoint a second assistant physician to said asylum, whose salary shall be fixed and paid in the same manner now provided by law in relation to the other resident officers of said asylum.

Second assistant physician may be appointed.

§ 5. The managers of the said asylum are authorized, under the direction and subject at all times to the control of the acting canal commissioner, having charge of the Chenango canal, to use the surplus water, discharge around or through the fifth lock on said canal, to operate a pump, to supply said

Surplus water of canal how to be used.

PART I.

asylum with water, from said canal or from Nail creek, in case the said commissioner shall be of opinion that the same can be done without detriment to the navigation of said canal.

CHAP. 282.

AN ACT in relation to the State Lunatic Asylum.

PASSED April 10, 1850; "three-fifths being present."

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Third as-
sistant phy-
sician.

§ 1. The managers of the State Lunatic Asylum are authorized in their discretion to appoint on the nomination of the superintendent of said asylum, a third assistant physician, whose salary shall be fixed and paid in the same manner as those of the other resident officers of said asylum.

Indigent
persons,
not pau-
pers,
when to be
admitted.

Judge to
give notice
of applica-
tion to su-
perinten-
dent of
poor.

§ 2. No person in indigent circumstances not a pauper, shall be admitted into the asylum on the certificate of a county judge, made under and pursuant to the provisions of the twenty-sixth section of the act to organize the State Lunatic Asylum, and more effectually to provide for the care, maintenance, and recovery of the insane, passed April 7, 1842, unless such person has become insane within one year next prior to the granting of such certificate by the county judge, and it shall be the duty of said judge when an application is made to him pursuant to said twenty-sixth section of said act, to cause such reasonable notice thereof and of the time and place of hearing the same to be given to one of the superintendents of the poor of the county chargeable with the expense of supporting such person in the asylum if admitted, or if such expense is chargeable to a town, or city then to an overseer of the poor of such town or city as he may judge reasonable under the circumstances and he shall then proceed to enquire as to the time when such person became insane, and shall in addition to the requirements of said twenty-sixth section state in his certificate that satisfactory proof has been adduced before him, that such person became insane within a year next prior to the date of his certificate. On granting such certificate the judge may in his discretion, require the friends of the patient to give security to the superintendent of the poor of the county to remove the patient from the asylum at the end of two years, in case he does not sooner recover. When a patient who is admitted into the asylum on the certificate of a county judge, given pursuant to the twenty-sixth section of the aforesaid act, has remained in the asylum two years, and has not recovered, the superintendent of the asylum shall send notice by mail to the overseer of the poor of the town where the patient resided at the time of his admission into the asylum, or to the county judge of the county from which he

was sent, that such patient has remained two years in the asylum and has not recovered, and that he should be removed from the asylum, and that in case he is not removed the expense of his support will be chargeable to the county until he is so removed, and then such expense shall be chargeable to the county accordingly, but in every case where a patient admitted into the asylum pursuant to the provisions of the twenty-sixth section of said act, shall have remained there two years, and has not recovered, the managers of the asylum may, in their discretion, cause such patient to be returned to the county from which he came, and charge the expense of such removal to the county.

[Sections 3 and 4 temporary.]

CHAP. 446.

AN ACT to amend the act entitled, "An act to organize the State Lunatic Asylum, and more effectually to provide for the care, maintenance, and recovery of the insane," passed April seventh, one thousand eight hundred and forty-two.

PASSED July 9, 1851.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. The county judge of each of the counties of this state, is hereby authorized to send all such indigent lunatics, belonging to each county, as may be brought before him, either to the county poor house or to the state lunatic asylum, as in his judgment may be for the best interests of all concerned.

Power of
county
judge.

CHAP. 502.

AN ACT to establish an asylum for idiots, and making an appropriation therefor.

PASSED July 10, 1851; "three-fifths being present."

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. The governor shall, by and with the advice and consent of the senate, appoint five trustees, who, together with the governor, lieutenant-governor, secretary of state and comptroller, shall be trustees of an institution for the education of idiots, to be called "The Asylum for Idiots," with power to establish rules and regulations for the government of the asylum.

Trustees
how ap-
pointed.

§ 2. The said trustees shall procure a building suitable for the education of such idiots as may be selected by said trus-

Building to
be procur-
ed.

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Selection of
idiots, how
made.

tees not exceeding twenty, and they shall have power to employ all necessary teachers, keepers and assistants.

§ 3. The said number of idiots shall be selected from those whose parents or guardians are unable to provide for their support, some of them from each of the judicial districts of this state, and the trustees are authorized to receive such additional number of idiots as can be conveniently received into the asylum on such terms, and on the payment of such sum as the trustees may deem just.

[Section 4 temporary.]

Annual re-
port.

§ 5. The trustees of this institution shall make an annual report on or before the first day of February in each year, to the legislature, of the condition of the institution.

CHAP. 159.

AN ACT making appropriations for the continuance and enlargement of the State Asylum for Idiots.

PASSED April 11, 1853; three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

[Sections 1 and 2 temporary.]

Number of
pupils to be
selected for
gratuitous
instruction.

§ 3. There shall be received, and be supported gratuitously, in the said asylum, sixty-four pupils, to be selected in equal numbers, as near as may be, from each judicial district, from those whose parents or guardians are unable to provide for their support therein; and such additional number of idiots as can be conveniently accommodated may be received into the asylum, by the trustees, on such terms as they may deem just.

CHAP. 163.

AN ACT appropriating moneys for the completion of buildings for the New York Asylum for Idiots, and to provide for the clothing of the pupils in the same.

PASSED April 5, 1855; three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Pupils how
supported.

§ 3. The supervisors of any county in the state from which state pupils may be selected and received into the said asylum for idiots, and whose parents are unable to furnish them with suitable clothing, are hereby authorised and required, while such pupils are under instruction, to raise a sum of money for this purpose, not exceeding twenty dollars in any one year, for each pupil from said county.

CHAP. 650.

AN ACT to amend the acts in relation to the State Lunatic Asylum, and to confer certain powers upon justices of the sessions.

PASSED April 16, 1857.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. Whenever a county judge shall be precluded from acting as such, in proceedings under the twenty-sixth section of the act to organize the state lunatic asylum, and more effectually to provide for the care, maintenance and recovery of the insane, passed April seventh, eighteen hundred and forty-two, by reason of relationship by consanguinity or affinity to any lunatic in indigent circumstances, application may be made in behalf of such lunatic, to one of the justices of the sessions, resident of the county in which such lunatic resides, and such proceedings shall be had by and before such justices, as is provided for in said section, and the said justice shall possess all the powers, and exercise the same jurisdiction in all respects under said section, and the amendment thereto passed April tenth, eighteen hundred and fifty, as such county judge would be authorized to possess and exercise, were it not for such disability. And the certificate of such justice, given under the provisions of said twenty-sixth section and the provisions of this act, shall for all purposes be as effectual and binding as if made by the county judge.

Application
to justices
in certain
cases.

CHAP. 220.

AN ACT to re-organize the State Asylum for Idiots, and to provide for the government and management thereof,

PASSED April 12, 1862; three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. The management for the asylum for idiots shall be vested in a board of trustees, consisting of the governor, lieutenant-governor, secretary of state, comptroller, superintendent of public instruction, and eight other persons.

Manago-
ment of
asylum.

§ 2. Henry N. Pohlman, James H. Titus, Hamilton White, Allen Munroe, Hiram Putnam, Franklin Townsend, Lyman Clary and George H. Middleton, present trustees of the asylum for idiots, shall continue to be such trustees, and shall hold their office as follows: the said Franklin Townsend and George H. Middleton for two years, the said Allen Munroe

Trustees.

PART I.

How appointed hereafter.

and Hamilton White for four years, the said Henry N. Pohlman and Lyman Clary for six years, and the said James H. Titus and Hiram Putnam for eight years, from the thirty-first day of December, one thousand eight hundred and sixty-one and until others are appointed in their places, subject, however, to being removed at any time by the Senate, upon the recommendation of the governor. Their successors shall be appointed by the Senate upon the nomination of the governor, and shall hold their offices for eight years, and subject to be removed in the manner aforesaid. The Senate may, in like manner appoint a trustee for the unexpired term of office of any incumbent who shall die, resign, be removed from office, or cease to be an inhabitant of the state during his term, and such trustee shall be subject to removal in the manner above provided. Five members of the said board shall constitute a quorum for the transaction of business.

Powers and duties of board of trustees.

§ 3. Said board shall have the general direction and control of all the property and concerns of the said asylum not otherwise provided by law, and shall take charge of its general interests, and see that its general design be carried into effect, and everything done faithfully according to the requirements of the legislature, and the by-laws, rules and regulations of the asylum.

Officers.

§ 4. The board shall appoint a superintendent, who shall be a well educated physician, and a treasurer, who shall reside in the city of Syracuse, and give bonds to the people of the state, for the faithful performance of his trust, in such sum and with such sureties as the comptroller of the state may approve. The superintendent shall appoint a steward and a matron, who, together with the superintendent, shall constantly reside in the asylum, and shall be denominated the resident officers thereof.

Salaries of officers.

§ 5. The board shall, from time to time, determine the annual salaries and allowances of the resident officers of the asylum. But no determination as to said salaries, or either of them, nor any alteration of them, or either of them, shall be made unless there shall be present at a meeting of the board of trustees, the Governor, Lieutenant-Governor, Secretary of State, Comptroller, Superintendent of Public Instruction, or a majority of those officers, of whom the Comptroller shall be one.

When payable.

§ 6. The salaries and allowances of the resident officers of the asylum shall be paid quarterly on the first days of October, January, April and July, in such year, by the treasurer of the asylum, on presentation of the bills therefor, audited, allowed and certified, as prescribed in the by-laws.

May hold in trust donations.

§ 7. The trustees may take and hold in trust for the state any grant or devise of land, or any donation or bequest of money or other personal property, to be applied to the maintenance and education of idiots, and the general use of the asylum.

CHAP. XX.
Establish
by-laws.

§ 8. The trustees are hereby directed and empowered to establish such by-laws as they may deem necessary and expedient for regulating the appointment and duties of officers, teachers, attendants and assistants, for fixing the conditions of admission, support and discharge of pupils, and for conducting in a proper manner the business of the asylum; also to ordain and enforce a suitable system of rules and regulations for the internal government, discipline and management of the asylum.

Duties of
superinten-
dent.

§ 9. The superintendent shall be the chief executive officer of the asylum. He shall have the general superintendence of the buildings, grounds and farm, together with their furniture, fixtures and stock, and the direction and control of all persons employed in and about the same, subject to the laws and regulations established by the trustees. He shall have the appointment of his co-resident officers, with power to assign them their respective duties, subject to the by-laws. He shall employ, subject to the supervision of the board of trustees, such teachers, attendants and assistants as he may think proper and necessary for the economical and efficient carrying into effect of the design of the institution, prescribe their several duties and places, and fix their compensation, and may discharge any of them. He shall, also, from time to time, give such orders and instructions as he may judge best calculated to induce good conduct, fidelity and economy in any department of labor and expense, and he is authorised and enjoined to maintain salutary discipline among all who are employed by the institution, and to enforce strict compliance with such instructions and uniform obedience to all the rules and regulations of the asylum. He shall further cause full and fair accounts and records of all his doings, and of the entire business and operations of the institution, together with the condition and prospects of the pupils, to be kept regularly, from day to day, in books provided for that purpose; and he shall see that all such accounts and records shall be fully made up to the first days of April and October in each year, and that the principal facts and results, with his report thereon, be presented to the board at its semi-annual meetings. The exercise of the foregoing powers shall be subject to the approval of the trustees, except as herein otherwise provided. He shall conduct the official correspondence of the institution, and keep a record of the applications received, and the pupils admitted, and he shall be accountable for the careful keeping and economical use of all furniture, stores and other articles provided for the asylum, and prepare and present to the board at its semi-annual meetings a true and perfect inventory of all the personal property and effects belonging to the asylum.

Exemp-
tions
of officers.

§ 10. The resident officers of the asylum and all the teachers, attendants and assistants actually employed therein, during the time of such employment shall be exempt from

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serving on juries, from all assessments for labor on the highways, and in time of peace from all service in the militia; and the certificate of the superintendent shall be conclusive evidence of such employment.

Board to
keep a
record.

§ 11. The board shall keep in a bound book, to be provided for that purpose, a fair and full record of all its doings, which shall be open at all times to the inspection of any of its members, and of all persons whom the Governor or either house of the legislature may appoint to examine the same.

Times of
meeting of
trustees.

§ 12. The board of trustees shall maintain an effective inspection of the affairs and management of the institution; for which purpose the board shall meet at the asylum twice in each year, at such time as the by-laws shall provide; and a committee of three trustees to be appointed by the board, at the annual meeting thereof, shall visit it once in every month; such committee shall also perform such other duties, and exercise such other powers as shall be prescribed by the by-laws, or as the board may, from time to time, ordain.

Trustees
shall have
access to
accounts
and build-
ing.

§ 13. It shall be the duty of the resident officers to admit any of the trustees into every part of the asylum, and to exhibit to him or them, on demand, all the books, papers, accounts and writings belonging to the institution, or pertaining to its business, management, discipline or government; also, to furnish copies, abstracts and reports whenever required by the trustees.

Duties of
treasurer.

§ 14. The treasurer shall have the custody of all moneys, bonds, notes, mortgages and other securities and obligations belonging to the asylum. He shall keep full and accurate accounts of receipts and payments, in the manner directed in the by-laws, and such other accounts as the trustees shall prescribe. He shall balance all the accounts on his books annually, on the first day of October, and make a statement of the balances thereon, and an abstract of all the receipts and payments of the past year; which he shall, within three days thereafter, deliver to the auditing committee of the trustees, who shall compare the same with his books and vouchers, and verify the same by a further comparison with the books of the superintendent, and certify the correctness thereof to the trustees at their annual meeting. He shall further render a quarterly statement of his receipts and payments to said auditing committee, who shall compare and verify the same as aforesaid, and report the result, duly certified, to the trustees, at the annual meeting thereof, who shall cause the same to be recorded in one of the books of the asylum. He shall further render an account of the state of his books, and of the funds and other property in his custody, whenever required so to do by the trustees.

Authority
of treasurer

§ 15. Said treasurer is also authorized to receive for the use of the asylum, any and all sums of money which may be due upon any note or bond in his hands belonging to the asylum; also any and all sums which may be charged and due accord-

ing to the by-laws of the asylum, for the support of any pupil therein, or for actual disbursements made in his behalf for necessary clothing and traveling expenses, in an action in the supreme court, to be brought in said treasurer's name, as treasurer of the asylum of idiots; and which shall not abate by his death, removal or resignation, against the individual or county liable therefor, and having neglected to pay the same when demanded by the treasurer; in which action judgment shall be rendered for such sum as shall be found due, together with costs, and interest from the time of the demand made as aforesaid. Every such action may be brought in the county of Onondaga. Said treasurer may, also, upon the receipt of the money due upon such judgment, or upon any mortgage in his hands belonging to the asylum, execute a release, and acknowledge full satisfaction thereof, so that the same may be discharged of record.

§ 16. The superintendent shall, at the time of the admission of any pupil into the asylum, enter in a book to be printed and kept for that purpose, a minute, with date, of the name and residence of the pupil, and of the person or persons upon whose application he is received; together with a copy of the application, statement, certificate and all other papers accompanying such idiot; the originals of which he shall file and carefully preserve.

Name and residence of pupil to be kept.

§ 17. The supervisors of any county in the state, from which state pupils may be selected and received into the asylum, are hereby authorized and required while such pupils remain at the asylum, to raise the sum of twenty dollars annually, for the purpose of furnishing suitable clothing for each pupil from said county; and on or before the first day of April in each year, pay over the same to the treasurer of the asylum. The superintendent shall immediately, on receiving any pupil, give notice thereof to the clerk of the board of supervisors of the county from which such pupil shall have been sent to said asylum.

Supervisors to pay \$20 for each pupil annually.

§ 18. There shall be received and supported gratuitously in the asylum one hundred and twenty pupils, to be selected in equal numbers, as near as may be, from each judicial district, from those whose parents or guardians are unable to provide for their support therein, to be designated as state pupils; and such additional number of idiots as can be conveniently accommodated, may be received into the asylum by the trustees, on such terms as may be just. But no idiot shall be received into the asylum, without there shall have been first lodged with the superintendent thereof, a request to that effect, under the hand of the person by whose direction he is sent, stating the age, and place of nativity, if known, of the idiot, his christian and surname, the town, or city, and county in which they severally reside, the ability or otherwise of the idiot, his parents or guardians, to provide for his support in whole or in part, and if in part only, then

Manner of receiving pupils.

PART I.

what part; and the degree of relationship, or other circumstance of connection between him and the person requesting his admission; which statement shall be verified in writing, by the oath of two disinterested persons, residents of the same county with the idiot, acquainted with the facts and circumstances so stated, and certified to be credible by the county judge of the same county. And no idiot shall be received into said asylum unless the county judge, of the county liable for his support, shall certify that such idiot is an eligible and proper candidate for admission to said asylum as aforesaid.

Relating to
discharge of
pupil and
payment of
expenses.

§ 19. Whenever the trustees shall direct a state pupil to be discharged from the asylum, the superintendent thereof is authorized to return such pupil to the county from which he was sent to the asylum, and deliver him to the keeper of the poor house of such county; and the superintendents of the poor of said county shall audit and pay the actual and reasonable expenses of such removal, as part of the contingent expenses of said poor house. But if any town, county or person be legally liable for the support of such pupil, the amount of such expenses may be recovered for the use of the county, by such superintendents of the poor. If such superintendents of the poor neglect, or refuse to pay such expenses, on demand, the treasurer of the asylum may pay the same and charge the amount to the said county; and the treasurer of the said county shall pay the same, with interest, after thirty days, out of any fund in his hands not otherwise appropriated; and the supervisors of the said county shall levy and raise the amount as other county charges.

Relating to
support of
pupils.

§ 20. The superintendent is authorized to agree with the parent, guardian or committee of any idiot, or with any other person or persons, for the support, maintenance and clothing of any idiot, at the asylum, upon such terms and conditions as may be prescribed by the by-laws or approved by the trustees. But every parent, guardian, committee or other person applying for the admission into the asylum of any idiot who, or whose parents or guardians, are of sufficient ability to provide for his maintenance therein, shall, at the time of his admission, deliver to the superintendent a bond, with one or more sureties, to be approved by the trustees in such a manner as they shall prescribe, in the penal sum of at least three hundred dollars, conditioned to pay to the treasurer, for the time being, of the asylum, by his name of office, all such sum or sums of money, at such time or times as shall be agreed upon as aforesaid; and to remove such idiot from the asylum, free of expense to the trustees, within twenty days after the service of the notice hereinafter provided. And if such idiot, or his parents or guardians, are of sufficient ability to pay only some portion less than the whole of the expenses of supporting and clothing him at the asylum, said bond shall be conditioned only for his removal as aforesaid; and the

CHAP. XX.
Amount to
be paid by
parent or
guardian.

superintendent may take security by note or other written contract or agreement, with or without sureties, as he may deem proper, for such portion of the said expenses as the idiot, his parents or guardians, are able to pay, subject, however, to the approval of the trustees, in the manner that shall be prescribed in the by-laws. Notice to remove any idiot from the asylum, shall be in writing, signed by the superintendent; it shall be directed to the parents, guardians, committee or other person or persons, upon whose request he was received, at the place or places of residence mentioned in such request, and may be served by depositing the same in the post office at the city of Syracuse, and with the postage prepaid. If the idiot shall not be removed from the asylum, according to the conditions of said bond, within twenty days after the service of such notice in manner aforesaid, he may be removed and disposed of by the superintendent, as directed in the last preceding section in relation to state pupils, and all the provisions of that section respecting the payment and recovery of the expenses of the removal and disposition of a state pupil, shall be equally applicable to similar expenses arising under this section.

§ 21. The provisions of section nineteen of this act shall be applicable to all state pupils now in the asylum. And any bond, bill, note, agreement, undertaking or other security for the maintenance or support of any pupil at the asylum, heretofore made by any person in his behalf, and now belonging to the asylum, shall be valid and effectual in law, and may be prosecuted as provided in section fifteen of this act.

Not to affect
the validity
of any note
or security
belonging
to asylum.

§ 22. All laws and parts of laws inconsistent with the provisions of this act, are hereby repealed.

Repeal.

CHAP. 229.

AN ACT in relation to habitual drunkards.

PASSED May 7, 1840.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. Every person upon whom the notice mentioned in section first, title four, chapter twenty, first part of the Revised Statutes has been served, shall be liable to the forfeiture prescribed in the second section of the same title, whenever any clerk, agent or member of the family of such person shall knowingly give or sell in any manner whatever spirituous liquors to any person designated as an habitual drunkard, in the manner mentioned in said first section; except by the personal direction or on the written certificate of some physician stating that such liquor is necessary for the preservation or recovery of the health of such drunkard, as prescribed in such second section.

Exception
as to forfeitures.

PART I.
Minors and
apprentice.

§ 2. Where the parents or guardian of a minor under sixteen years of age, or the master of an apprentice or servant have been designated by the overseers of the poor as habitual drunkards, no tavern-keeper, grocer or other person licensed to sell any strong or spirituous liquors, or wines, shall sell any such liquors or wines to any such minor or apprentice or servant, without the consent of the overseers of the poor of the city or town where such minor or apprentice or servant shall reside, and whoever shall offend against the provisions of this section, shall forfeit the penalty prescribed by section seventeen, of title nine, of chapter twenty of the first part of the Revised Statutes, to be recovered by such overseers of the poor.

Duty of
 overseers of
 the poor.

§ 3. Whenever the overseers of the poor of any city or town shall discover any person to be an habitual drunkard, they shall by writing under their hands, designate and describe such drunkard, and perform all the services and duties mentioned and specified in section first of title four of chapter twenty of the first part of the Revised Statutes.

7 Pai., 312; 3 Pai., 199; 2 Pai., 422. See Laws of 1857, ch. 628, § 20.

CHAP. 504.

AN ACT more effectually to suppress gambling.

PASSED July 10, 1851.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Penalty for
 keeping a
 place for
 gambling.

§ 1. If any person shall keep a room, building, arbor, booth, shed, tenement, boat or float, to be used or occupied for gambling, or shall knowingly permit the same to be used or occupied for gambling; or if the owner, superintendent or agent of any room, building, arbor, booth, shed, tenement, boat or float, shall rent the same to be used or occupied for gambling, he shall, on conviction thereof, be fined in any sum not less than fifty nor more than five hundred dollars.

Penalty for
 keeping
 gambling
 devices.

§ 2. If any person, for gambling purposes, shall keep or exhibit any gambling table, establishment, device or apparatus, or if any person or persons shall be guilty of dealing "faro" or banking for others to deal "faro," or acting as "look-out" or game-keeper for the game of "faro" or any other banking game, where money or property is dependent on the result, or if any person shall sell or vend what are commonly known as, or are called lottery policies, or any writing, card, paper, or document in the nature of a bet, wager, or insurance upon the drawing or drawn numbers of any public or private lottery, or if any person shall endorse a book or any other document for the purpose of enabling others to sell or vend lottery policies, he shall be taken and held as a common gambler, and upon conviction thereof, shall be sentenced to not less than ten days hard labor in the penitentiary, or

For selling
 lottery
 tickets.

not more than two years hard labor in the state prison, and be fined in any sum not more than one thousand dollars, to be paid into the county treasury where such conviction shall take place, for the use of the common schools therein, to be divided among the school districts in that county, in the same manner as the school money of the state is divided among said districts, and in default thereof shall remain imprisoned until such fine be remitted or paid.

So amended by Laws of 1855, ch. 214.

§ 3. If an affidavit shall be filed with the magistrate or police justice of any town or city, before whom complaint shall have been made of an offence against any provision of this act, stating that the affiant has reason to believe, and does believe, that the person so charged in such complaint has upon his person or at any other place named in such affidavit any specified articles of personal property, or any gambling table, device or apparatus, or any lottery policies, public or private, the discovery of which might lead to establish the truth of such charge, the said magistrate or justice may in his discretion by warrant, command the officer, who is authorized, to arrest the person so charged, to make diligent search for such property and table, device or apparatus, and if found, to bring the same before such magistrate or justice; and the officers so seizing shall deliver the same to the magistrate or justice, before whom he takes the same, who shall retain possession of said property, and be responsible therefor until the discharge, or commitment, or letting to bail, of the person so charged, and in case of such commitment or letting to bail of the person so charged, such officer shall retain such property, subject to the order of the court before which such offender may be required to appear, until his discharge or conviction. And in case of the conviction of such person the gambling table, device, or apparatus shall be destroyed, and the household property and other fixtures belonging to such gambling place shall be held liable to be sold to pay any judgment and costs which may be rendered against such person; and after the payment of such judgment and costs, the surplus, if any, shall be paid into the treasury of the county where such prosecution shall take place, to be divided as provided for in the preceding section; and in case of the discharge of such person by the magistrate or court, the officer having such property in his custody, shall, on demand, deliver it to such person.

Duty of
magistrate
upon com-
plaint
made.

§ 4. It shall be lawful for any justice of the peace, police justice, chief magistrate of any municipal corporation, or judge of any court of record, upon complaint upon oath that any gambling tables, apparatus, establishment or device is kept by any person for the purpose of being used to win or gain money or other property, or by any other person, or any lottery policies of any lotteries, to issue his warrant commanding any sheriff or constable, to whom the same shall be directed,

Warrants
by whom
and how
issued.

PART I

within the proper jurisdiction, after demanding entrance to break open and enter any house or place wherein such gambling table, establishment, apparatus or device, shall be kept, and to seize and deliver the same to the mayor of the city, president of the village, supervisor of the town, or clerk of the county where such seizure shall be made, who shall keep the same until the term of the court at which the case shall be tried, and the court shall then if there be no necessity of keeping the property to be produced on the trial of an offender against this act, have a jury sworn to try the fact whether the property taken was or is used for gambling, and if the finding shall be that the property was used for gambling, the court shall order such property to be broken up and sold by the sheriff of the county and the proceeds shall after the payment of costs, go into the treasury of the county, for the use of the common schools therein in the same manner as is provided in the second section of this act.

Penalty for
inveigling
persons to
gambling
houses.

§ 5. If any person shall, through invitation or device, persuade or prevail on any person to visit any room, building, arbor, booth, shed, tenement, boat or float, kept for the purpose of gambling, he shall, upon conviction thereof, and upon proof that the person so invited has gambled therein, be held responsible for the money or property lost by such person so invited or persuaded by reason of such invitation or device, and in addition thereto he shall be fined and imprisoned according to the provisions of the second section of this act.

Duties of
sheriffs and
other off-
cers.

§ 6. It shall be the duty of all sheriffs, police officers, constables and prosecuting or district attorneys, to inform against and prosecute all persons whom they shall have credible reason to believe are offenders against this act, and for refusal so to do, they shall be guilty of a misdemeanor and punished by a fine of not more than five hundred dollars.

Penalty for
permitting
gambling.

§ 7. If any commander, owner or lessee of any boat or float shall knowingly permit any gambling for money or property on such boat or float, and shall not, upon his knowledge of the fact, immediately prevent the same, he shall upon conviction thereof be held responsible for the money or property so lost, and fined in any sum not more than five hundred dollars.

CHAP. 98.

AN ACT to prevent prize fights and fights among game animals.

PASSED April 4, 1856.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Fights pro-
hibited.

§ 1. Every person who shall set on foot, or instigate, or move to, or carry on, or promote or engage in as a witness, umpire or judge, or do any act towards the furtherance of any

premeditated fight, or contention between persons with their fists, commonly called a prize fight, or any fight between game birds, or game cocks, or dogs, or bulls, or bears, or between dogs and rats, or dogs and badgers, or any other animals, that shall have been premeditated by any person having custody of such animals, shall be liable to arrest and prosecution for so doing, and upon conviction thereof, shall be punished by imprisonment in a penitentiary or county jail, for a term not less than ten days nor exceeding one year, or by fine not exceeding one thousand dollars. Penalty.

§ 2. Upon complaint under oath before any magistrate having power to take complaints of a criminal nature, that an offence within any of the specifications of section first is about to be committed, and setting forth in such complaint the grounds thereof, such magistrate shall, in his discretion, be empowered to issue a warrant to any officer of the county, having power to execute a warrant, reciting therein the name of the complainant and his residence, and the substance of his complaint, and therein directing such officer to proceed and prevent the said prize fight, and the said fight among fowls or animals as mentioned in section first of this act, by arresting any person or persons whom he may find wilfully witnessing the same; such officer having such warrant, shall have authority to call to his aid the civil power of the county, and upon any arrest or arrests being made in pursuance of this section, the person or persons so arrested shall be taken before the magistrate so having issued the warrant, and in the said magistrate's discretion may be then and there compelled to enter into a bond in the sum of one thousand dollars to the people of the state of New York, conditioned that he will not for the space of one year next succeeding the date of said bond, offend against any of the provisions of this act; the said bond after being taken, to be forwarded to the district attorney of the county, and be by him retained one year, and prosecuted for breaches, in any of the courts of this state, if any shall have been committed. Duty of Magistrate

Bond to be
given by
persons
arrested.

CHAP. 306.

AN ACT fixing the period for closing all the lotteries authorized to be drawn within this state.

PASSED April 30, 1833.

Whereas John B. Yates and Archibald M'Intyre, assignees of all the unsatisfied lottery grants made by this state, have executed to the people thereof an agreement, bearing date the twenty-fifth day of January last, that all lottery grants heretofore made by this state, shall cease and determine from and after the close of the present year, and releasing and acquitting the people of this state from all right, title and Preamble.

PART I.

claim to continue or draw any lottery within this state, after the last day of December next, providing the legislature will pass an act declaring that the lotteries authorised by this state, may be continued until the close of the present year: Therefore,

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Lotteries.

§ 1. The lotteries authorised by law to be drawn within this state may be continued until the close of the present year; after the end of which period, it shall not be lawful to continue or draw any lottery within this state; but all and every lottery heretofore granted or authorized within this state, shall absolutely cease and determine.

Release.

§ 2. That the said agreement and release of the said John B. Yates and Archibald M'Intyre, shall be filed and recorded in the office of the secretary of state.

7 N. Y., 228; 1 N. Y., 180; 13 B., 577; 4 B., 314; 3 D., 101, 212; 23 W., 418; 7 J. R., 434; 5 S. S. C., 614; 1 E. D. S., 218.

CHAP. 78.

AN ACT to amend article seventh, title eighth, chapter twentieth, part first of the Revised Statutes, entitled "Of the disturbance of religious meetings."

PASSED April 8, 1834.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

**Persons
complained
of may de-
mand a
jury.**

§ 1. From and after the passage of this act, it shall and may be lawful for any person who may be complained of for a violation of any of the provisions of the article hereby amended, before the court shall proceed to investigate the merits of the cause, to demand of such court that he may be tried by a jury. Upon such demand, it shall be the duty of such court to issue a venire, to any constable of the county, or marshal of the city, where the offence is to be tried, commanding such officer to summon the same number of jurors, and in the same manner, as is provided for the summoning of jurors before courts of special sessions. The said court shall proceed to empanel a jury for the trial of said cause, in the same manner, and shall be subject to all the rules and regulations prescribed in the act providing for trials by jury in courts of special sessions.

17 W., 213.

Costs.

§ 2. In addition to the costs allowed by law for prosecution under the article hereby amended, all the costs consequent upon a trial by jury shall be added and paid by the party offending, in case of conviction, and shall be the same as is allowed by law in civil cases.

CHAP. 349.

AN ACT in relation to proceedings against persons observing as the Sabbath the day commonly called Saturday.

PASSED November 10, 1847.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. No person whose religious faith and practice is to keep the seventh day of the week, commonly called Saturday, as a day set apart by divine command as the Sabbath of rest from labor, and dedicated to the worship of God, shall be subject to perform military duty or jury duty in a justices court, on such day, except that such persons shall be subject to perform military duty on such day in case of invasion, insurrection, or in time of war.

Exemptions from military and jury duties.

§ 2. Any person who shall knowingly and maliciously cause or procure any process issued from a justices court, in a civil suit, to be served on said day upon any such person, or who shall serve any such process which shall be made returnable on said day, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be subject to a fine not exceeding one hundred dollars, or imprisonment not exceeding thirty days, or both.

Process not to be served.

§ 3. Any person who shall in like manner procure any such suit, pending in such court against any person of such religious faith and practice, to be adjourned, to be tried on said day, shall be deemed guilty of a misdemeanor, and subject to like punishment.

Id.

§ 4. The act entitled, "An act in relation to Seventh Day Baptists," passed May 7, 1839, is hereby repealed.

Repeal.

CHAP. 272.

AN ACT to prevent the sale of strong or spirituous liquors to paupers.

PASSED May 11, 1835.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. No tavern-keeper, grocer, or other dealer in strong or spirituous liquors, shall, directly or indirectly, sell or cause to be sold, any strong or spirituous liquor to any pauper, knowing him or her to be such pauper as aforesaid.

Liquor, not to be sold to paupers.

§ 2. No person shall, directly or indirectly, receive, or cause to be received, by purchase or otherwise, from any such pauper or person, any clothing or effects whatsoever, knowing, or having reason to know, that such clothing or effects were in

Clothes not to be purchased from them.

PART I.

whole or in part furnished to such pauper or person at the public expense.

Penalty.

§ 3. Every person offending against either of the provisions of this act, shall, for each offence, forfeit the sum of five dollars, in addition to the value or amount of such clothing, effects or money obtained or taken in violation of this act, to be sued for and collected, with costs, by and in the name of the superintendents of the poor of any county in this state having such officers, or by and in the name of the overseers of the poor of any town which supports its own poor, for the use of the poor of such county or town, as the case may be.

CHAP. 97.

AN ACT authorizing licenses to keep taverns without including a license to sell spirits, and to abolish fees for the same.

PASSED April 12, 1843.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Board of
excise to
receive no
fees.

Their pay
for one
day's atten-
dance.

Blanks to
be paid for.

§ 3. No fee or reward shall be taken by any board of excise, or by any member thereof, for any license to keep a tavern, or to sell strong or spirituous liquors, or for any service required of such board, nor shall any compensation be retained by any such board, or by any member thereof, out of the excise money, but the whole amount thereof shall be paid over in the manner now required by law; but the persons composing such board of excise shall be entitled each to receive the sum of one dollar and twenty-five cents for one day's attendance only thereon, when actually done, to be audited, allowed and paid in like manner as other town charges, and no other or greater compensation shall be allowed, whether any license shall be granted or not, or whether such board shall be in session one day, or more than one. The expenses of procuring blanks for such licenses as may be granted, when actually incurred, shall be audited, allowed and paid, in like manner as other town charges.

CHAP. 628.

AN ACT to suppress Intemperance and to regulate the sale of Intoxicating Liquors.

PASSED April 16, 1857; three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Commis-
sioners of
excise.

§ 1. There shall be appointed on the second Tuesday of May next, by the county judge and the two justices of the

sessions, or a majority of them, of which the county judge shall be one, in each of the counties of this State, (except the city and county of New York, wherein the chief justice of the superior court, the presiding judge of the court of common pleas and the recorder of the city, or any two of them, shall appoint,) at the place where the county courts are required to be held, three reputable freeholders, residents of the county, who shall be the commissioners of excise for their respective counties, and shall be known as the board of commissioners of excise. The said county judge and justices, and in the city of New York the chief justice of the superior court, the presiding judge of the court of common pleas and the recorder of the city, shall meet at the time and place aforesaid, and divide the said commissioners into three classes by lot. The commissioner assigned to the first class shall hold his office until the first day of January, eighteen hundred and fifty-nine, the commissioner in the second class until the first day of January, eighteen hundred and sixty-one, and the commissioner in the third class until the first day of January, eighteen hundred and sixty-three, and one commissioner in every two years hereafter, as the term of office shall expire, shall be appointed on the second Tuesday of May in such year, at the place and by the authorities above provided, who shall hold his office for six years from the first day of January following his appointment. In case of a vacancy in the office of county judge, the appointment of commissioners shall be made by the justices of the sessions. In case of a vacancy by death or otherwise in the board of commissioners, such vacancy shall be filled by the said judge and justices, or by the said chief justice of the superior court, the presiding judge of the court of common pleas, and the recorder of the city of New York, for the unexpired term of such commissioner; every commissioner, before he shall enter upon his duties, shall take and subscribe the oath prescribed by section one, article twelve of the constitution.

§ 2. The commissioners of excise shall meet in their respective counties at the place aforesaid, on the third Tuesday of May in each year, and on such other days as a majority of the commissioners shall appoint, not exceeding ten days in any one year, and in the city of New York, not exceeding fifty days, for the purpose of granting licenses as hereinafter prescribed. They shall have power to grant licenses to keepers of inns, taverns or hotels, being residents of the town or city where such inn, tavern or hotel is proposed to be kept, to sell strong and spirituous liquors and wines to be drank in their houses respectively; and to store keepers, being such residents, a license to sell such liquors and wines in quantities less than five gallons, but not to be drank in their shops, houses, out-houses, yards or gardens, and they shall have power to determine the sum to be paid for a license by each person applying, which sum shall be as follows: In towns

Powers and
duties.

See Sec
182 Chap
171
1870

See Sec 3
Chap
See Sec

PART I.

and incorporated villages, not less than thirty dollars nor more than one hundred dollars; and in cities not less than thirty dollars nor more than two hundred and fifty dollars; no license shall be granted to any person or firm to sell in more than one place.

3 P. C. R., 501; 16 How. P. R., 46.

To keep record of proceedings.

§ 3. They shall keep a book of minutes of all their proceedings in which shall be entered every resolution passed by them granting a license to any person, with the sum required to be paid, which minutes shall be verified by their signatures and filed with the town clerk of the town for which such license shall be granted, and in the several cities of the state, with the city clerk, within eight days thereafter.

To sign licenses.

§ 4. All licenses shall be signed by the commissioners granting the same. They shall not be issued until the requirements fixed by the board shall have been complied with; when issued they shall be in force, unless revoked, until ten days after the third Tuesday in May next succeeding the granting of such license, and in the city of New York until fifty days thereafter.

Clerk of board.

§ 5. Each of said boards of commissioners of excise, shall have the right to appoint a clerk for the time they may be actually in session, in accordance with the provisions of this act, such clerk to receive the same compensation as is allowed by this act to each of the commissioners. They shall keep a book of minutes of proceedings on which shall be entered the names of all applicants for license, and they shall also enter on said book a list of all licenses granted, with the names of the parties to whom the same are granted, and the names of the securities to the bond required in each case. The said book of minutes shall be deposited in the office of the county clerk. No fee or reward shall be taken by any board of excise, or by any member thereof, or by any clerk thereof, for any license to keep an inn, tavern or hotel, or to sell strong or spirituous liquors, or for any service required of such board, nor shall any compensation be retained by any such board, or by any member thereof, or by any clerk thereof, out of the excise money, but the whole amount thereof shall be paid over to the county treasurers, for the use of the poor in the several counties; but the persons composing such board of excise shall be entitled each to receive the sum of three dollars per day for services actually performed, to be allowed and paid in like manner as other county charges, and no other or greater compensation shall be allowed. The expenses of procuring necessary books for minutes, and necessary blanks, when actually incurred, shall be audited and paid in like manner as other county charges.

Granting of licenses.

§ 6. License shall not be granted to any person to sell strong and spirituous liquors and wines to be drank on the premises of the person licensed, unless such person proposes to keep an inn, tavern or hotel, nor unless the commissioners

are satisfied that the applicant is of good moral character, that he has sufficient ability to keep an inn, tavern or hotel, and the necessary accommodations to entertain travelers, and that an inn, tavern or hotel is required for the actual accommodation of travelers, at the place where such applicant resides or proposes to keep the same; all of which shall be expressly stated in such license; and no such license shall be granted except on the petition of not less than twenty respectable freeholders of this state residing in the election district where such inn, tavern or hotel is proposed to be kept, by them duly signed and verified by the oath of a subscribing witness, and not then unless in the opinion of the commissioners such inn, tavern or hotel is necessary or proper, and not more than one license shall be granted on the memorial of the same petitioners or any of them; all petitions upon which such licenses shall be granted shall be filed with the county clerk within eight days. And in case the commissioners shall grant any license contrary to the provisions of this act, they shall be deemed guilty of a misdemeanor.

§ 7. Nor shall such license to keep an inn, tavern or hotel be granted until the applicant shall have executed and delivered to the board of commissioners of excise herein provided, a bond to the people of this state, in the penal sum of two hundred and fifty dollars, with sufficient sureties, who shall duly justify in the sum of five hundred dollars, to be approved by the board of commissioners with a condition that such applicant, during the time that he shall keep any inn, tavern or hotel, will not suffer it to be disorderly, or suffer any gambling, or keep a gambling table of any description, within the inn, tavern or hotel, so kept by him, or in any out-house, yard or garden belonging thereto.

§ 8. Every keeper of an inn, tavern or hotel, in any of the towns or villages of this state, shall keep in his house at least three spare beds for his guests, with good and sufficient bedding, and shall provide and keep good and sufficient stabling, and provender of hay in the winter, and hay or pasturage in the summer, and grain for four horses or other cattle more than his own stock, for the accommodation of travelers; and every keeper of an inn, tavern or hotel in the cities of this state shall keep at least three spare beds and the necessary bedding, for the accommodation of travelers. For every neglect or default in having either of the articles herein required, such keeper shall forfeit ten dollars, to be recovered by the overseers of the poor for the use of the poor.

§ 9. Every inn, tavern or hotel keeper licensed under the provisions of this act, shall, within thirty days after obtaining his license, put up a proper sign on or adjacent to the front of his house, with his name thereon, indicating that he keeps an inn, tavern or hotel, and he shall keep up such sign during the time that he keeps an inn, tavern or hotel. For every

Bond to be taken.

What to be kept by inns.

To put up a sign.

See Chap
175-1111
1870 Dec
4

PART I.

No recovery for liquor trusted.

Clause in license.

To be of good character.

Penalties for violations.

Ib.

month's neglect to keep up such sign he shall forfeit ten dollars.

§ 10. No inn, tavern or hotel keeper, who shall trust any person other than those who may be lodgers in his house, for any sort of strong or spirituous liquors, or wines, shall be capable of recovering the same by any suit. All securities given for such debts shall be void; and the inn, tavern or hotel keeper taking such securities, with intent to evade this provision, shall forfeit double the sum intended to be secured thereby.

§ 11. In all licenses that may be granted (excepting to inn, tavern or hotel keepers,) to sell strong or spirituous liquors or wines, in quantities less than five gallons, there shall be inserted an express declaration that such license shall not be deemed to authorise the sale of any strong or spirituous liquor, or wine, to be drank in the house or shop of the person receiving such license, or in any out-house, yard or garden appertaining thereto, or connected therewith.

§ 12. Such licenses shall not be granted, unless the commissioners are satisfied that the applicant is of good moral character, nor until such applicant shall have executed a bond to the people of this State in the penal sum of five hundred dollars, with sufficient sureties, who shall duly justify in the sum of one thousand dollars, to be approved by the commissioners, and to be delivered to the commissioners, conditioned that during the term for which his license shall be granted he will not suffer his place of business to become disorderly; that he will not sell or suffer to be sold, any strong or spirituous liquors or wines to be drank in his shop or house, or in any outhouse, yard or garden appertaining thereto, and that he will not suffer any such liquor, sold by virtue of such license, to be drank in his shop or house, or in any out-house, yard or garden, belonging thereto; and whenever any person is seen to drink in such shop or house, out-house, yard or garden, belonging thereto, any spirituous liquors or wines, forbidden to be drank therein, it shall be prima facie evidence that such spirituous liquor or wines were sold by the occupant of such premises, or his agent, with the intent that the same should be drank therein. On any trial for the offence last aforesaid, such occupant or agent may be allowed to testify respecting such sale.

§ 13. Whoever shall sell any strong or spirituous liquors or wines in quantities less than five gallons at a time, without having a license therefor, granted as herein provided, shall forfeit fifty dollars for each offence.

§ 14. Whoever shall sell any strong or spirituous liquors or wines to be drank in his house or shop, or any outhouse, yard or garden appertaining thereto, or shall suffer or permit any such liquors or wines sold by him, or under his direction or authority, to be drank in his house or shop, or in any out-house, yard or garden thereto belonging, without having

obtained a license therefor as an inn, tavern or hotel keeper, shall forfeit fifty dollars for each offence.

§ 15. No inn, tavern or hotel keeper, or any other person licensed to sell any strong or spirituous liquors or wines, shall sell or give away any such liquors or wines to any Indian or apprentice, knowing or having reason to believe him to be such, without the consent of his master or mistress, nor to any minor under the age of eighteen years, without the consent of his father or mother, or guardian. Whoever shall offend against either of these provisions, shall forfeit ten dollars, to be recovered by the master of such apprentice or servant, or by the parent or guardian of such minor; and any person who shall sell or give away any strong or spirituous liquor to any Indian in this state, shall be deemed guilty of a misdemeanor, and on conviction shall be liable to a fine of twenty-five dollars for each and every offence.

Not to sell
to Indians
or appren-
tices.

Ann O'Neil
420 Lib.
577

§ 16. It shall be the duty of every sheriff, under sheriff, deputy sheriff, constable, marshal, policeman, or officer of police, to arrest all persons found actually engaged in the commission of any offence in violation of this act, and forthwith to carry such person before any magistrate of the same city or town, to be dealt with according to the provisions of this act; and it shall be the duty of such magistrate, on sufficient proof that such offence has been committed, unless such person shall elect to be tried before such magistrate, to require a bond to be executed by such offender in the penal sum of one hundred dollars, with sureties, who shall justify in double the amount severally, conditioned, that such offender will appear and answer the charge at the next term of the court of oyer and terminer or sessions to be held in said county, and abide the order and judgment of the court thereon, or to commit such offender to the county jail until such judgment of said court, or until he be discharged according to law. And it shall be the duty of the magistrate to entertain any complaint of a violation of this act, made by any person under oath, and forthwith to issue a warrant and cause such offender to be brought before him, to comply with the provisions of this section; and such magistrate shall, within ten days, cause such bond, together with all papers and affidavits, with a list of the persons and residences of the complainants and witnesses examined before him, to be delivered to the district attorney of the county, whose duty it shall be forthwith to prosecute the same.

Duty of
sheriff, &c.

3 P. C. R., 600.

§ 17. It shall be the duty of every such officer, whenever he shall find any person intoxicated in any public place, to apprehend such person and take him before some magistrate of the same city or town; and if such magistrate shall after due examination, deem him too much intoxicated to be examined, or to answer on oath correctly, he shall direct said officer to keep him in some jail, lock-up or other safe and con-

Intoxicated
persons.

PART I.

venient place, until he shall become sober, and thereupon forthwith to bring him before said magistrate; and whenever any person shall be brought before any magistrate, as provided in this section, it shall be the duty of such magistrate to administer to such person an oath or affirmation, and examine him as to the cause of such intoxication, and to ascertain the person or persons who sold or gave the liquor to such person; such intoxication being hereby declared to be an offence against the provisions of this act, punishable, upon conviction, by a fine of ten dollars, and costs at the same rate as in courts of special sessions, and imprisonment in the county jail, work house or penitentiary until paid, not, however, to exceed ten days. It shall be the duty of such officers, to arrest, or cause to be arrested, all such persons when so intoxicated, and of the magistrate to entertain such complaints and make such examination, under the penalty of fifty dollars, with full costs of suit, for any neglect to comply with the provisions of this section.

3 P. C. R., 386.

Not to sell
to drunken
persons.

§ 18. Whoever shall sell or give away any strong or spirituous liquors or wines, or shall suffer any such liquors or wines to be sold or given away, under his direction or authority, to any intoxicated person, shall forfeit not less than ten nor more than twenty-five dollars for each offence.

Duty of
magistrates
and overseers of
poor.

§ 19. It shall be the duty of magistrates and overseers of the poor in any town or city, on complaint and satisfactory proof by a wife, that her husband is an habitual drinker of intoxicating liquors, to issue written notices to all dealers in intoxicating liquors against whom such complaint is made, forbidding the sale or giving of such liquor to such husband for the term of six months from the date of the notice, under a penalty of fifty dollars, with costs, for each and every sale or giving of such liquor, after such notice shall have been given; to be sued for in her own name and for her own use. It shall be the duty of such magistrates and overseers of the poor to forbid the sale in like manner in all cases when a husband shall make like satisfactory proof concerning the wife, and all the provisions of this section shall apply the same in either case. It shall be the duty of magistrates and overseers of the poor, when like proof is made by a parent concerning a child, who is a minor under the age of twenty-one years, or of a child concerning a parent, to forbid the sale in like manner; and all the provisions of this act shall apply as in other cases named above.

Habitual
drunkards
and paupers.

§ 20. It shall not be lawful, under the provisions of this act, to sell intoxicating liquors to any person guilty of habitual drunkenness, nor to any person against whom the seller may have been notified by parent, guardian, husband or wife, from selling intoxicating liquors, and every party so selling or retailing intoxicating liquors, shall, on proof thereof, before any court or competent jurisdiction, be deprived of his license to

sell, and shall not be allowed a renewal of said license, and in addition, on conviction, shall be punished by a fine of not less than twenty dollars, nor more than fifty dollars for each and every violation of the provisions herein set forth. If any inn, tavern, or hotel keeper, or any other person or persons whatsoever, knowingly (outside of any poor house), shall sell or give to any pauper or inmate of any poor house or alms house, strong or spirituous liquors, or wines, such person or persons so offending shall be fined twenty-five dollars, and be guilty of a misdemeanor, and on conviction shall be imprisoned not more than sixty days.

§ 21. No inn, tavern or hotel keeper, or person licensed to sell liquors, shall sell or give away any intoxicating liquors or wines on Sunday, or upon any day on which a general or special election or town meeting shall be held, and within one quarter of a mile from the place where such general or special election or town meeting shall be held, in any of the cities, villages or towns of this state, to any person whatever, as a beverage. In case the election or town meetings shall not be general throughout the state, the provisions of this section in such case shall only apply to the city, county, village or towns in which such election or town meeting shall be held. Whoever shall offend against the provisions of this section shall be guilty of a misdemeanor, and on conviction shall be imprisoned in the county jail, workhouse or penitentiary not more than twenty days.

3 P. C. B., 600.

§ 22. The penalties imposed by this act, except the penalties provided for by sections eight, fifteen and nineteen, shall be sued for and recovered in the name of the board of commissioners of excise, and paid over to the treasurer of the county for the support of the poor of the county.

§ 23. Every bond taken pursuant to the provisions of this act, shall, within ten days after the execution of the same, be filed in the office of the clerk of the town or village in which the license shall be granted, and in cities, in the city clerk's office.

§ 24. Whenever a breach of the condition of such bond, given upon the granting of any license, shall happen, it shall be the duty of the commissioners of excise, the supervisor of the town, mayor of the city, or trustees of the village, in which the person who shall incur the penalty shall reside, to prosecute the same and recover the penalty therefor.

§ 25. Whenever any conviction or judgment shall be obtained against any person licensed to sell strong or spirituous liquors or wines, for any violation of the provisions of this act, either in a suit for a penalty or in a suit upon a bond given by such person, it shall be the duty of the justice or court before whom the same shall be had, to transmit to the next court of sessions of the county, a statement of such conviction or judgment, and the offence for which it was obtained.

Sundays
and elec-
tion days.

*Am by Dec
1875
1875
1875*

Penalties
how collect-
ed.

1875

Bonds to be
filed.

By whom
to be sued.

Convic-
tions.

See Dec

1875

PART I.
Revoking
of license.

§ 26. The said court shall cause the person or persons against whom such conviction or judgment was obtained, to be notified to appear on such day as the court shall appoint, to show cause why any such license that may have been granted to him or them should not be revoked. At the day appointed, and on such other days as the court shall appoint, it shall proceed to inquire into the circumstances, and shall revoke the license granted to the person or persons violating the provisions of this act.

Effect of re-
vocation.

§ 27. The person whose license shall be revoked shall be incapable of receiving any such license to sell strong or spirituous liquors or wines for the space of three years from the time of such revocation.

Liabie for
damages.

§ 28. Any person who shall sell any strong or spirituous liquors or wines to any of the individuals to whom it is declared by this act to be unlawful to make such sale, shall be liable for all damages which may be sustained in consequence of such sale, and the parties so offending may be sued in any of the courts of this state by any individual sustaining such injuries, or by the overseers of poor of the town where the injured party may reside, and the sum recovered shall be for the benefit of the party injured.

Duty of
courts.

§ 29. It shall be the duty of courts to instruct grand jurors to inquire into all offences against the provisions of this act, and to present all offenders under this act, and also all persons who may be charged with adulterating imported or other intoxicating liquors with poisonous or deleterious drugs or mixtures, or selling the same, or with knowingly importing or selling intoxicating liquors or wines adulterated with poisonous or deleterious drugs or mixtures; which offences are hereby declared to be misdemeanors, to be punished by imprisonment in the penitentiary, workhouse or jail, for a period of three months, and by a fine of one hundred dollars.

Others may
sue.

§ 30. In case the parties or persons whose duty it is, by the provisions of this act, to prosecute, shall neglect to prosecute for any penalty provided by this act, for the period of ten days after complaint to them that any provision of this act has been violated, accompanied with reasonable proof of the same, any other person may prosecute therefor in the name of the board of commissioners of excise.

Employ-
ment of in-
temperate
persons

§ 31. All incorporated companies and persons in this state, engaged in conveying passengers, including especially all railroad, steamboat and ferry companies, and all kinds of corporations conveying for hire, persons or property, shall be and hereby are required to refuse employment to all persons who, on good and sufficient proof, shall be shown to indulge in the intemperate use of intoxicating drinks, and any such company which shall retain in its employ any person or persons who shall on competent proof, be shown to be intoxicated at any period whilst in the active service of said company or person, either as engineer, conductor, fireman, switchtender,

commander, pilot, mate or foreman, or be in any way connected with the moving power or management, or whose duty, if neglected, would diminish the safety and security of life, limb or property, entrusted thereto, said company or corporation shall be liable to pay a sum of not less than fifty dollars nor more than one hundred dollars to the county treasurer in the county where the offence may be committed and proved, before any court of competent jurisdiction.

§ 32. In any judgment rendered or recovered on any bond to be given under this act, or for any penalty incurred under this act, the person or persons against whom such judgment shall be rendered shall not be entitled, under any execution issued on such judgment, to the liberties of the jail. No jail limits for defendants.

§ 33. Title nine of chapter twenty, of the first part of the Revised Statutes, and the act entitled "An act for the prevention of intemperance, pauperism and crime," passed April ninth, eighteen hundred and fifty-five, and all other acts inconsistent with the provisions of this act, are hereby repealed. Repeal.

CHAP. 274.

AN ACT requiring the commissioners of excise of the several counties of this state to report annually to the boards of supervisors of the several counties.

PASSED April 11, 1860; three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. The commissioners of excise in the several counties in this state are hereby required to make annual reports to the boards of supervisors of said counties at each annual meeting of said boards, and within the first five days from the first day of such annual meeting in each and every year after the passage of this act. To make annual report.

§ 2. Such report shall be in writing, and shall be signed by the said commissioners, or a majority of them, and shall contain a true statement of all moneys received by them as such commissioners in their official capacity during the year preceding the date of said report, and also the name of every person in said county to whom the said commissioners have granted a license to sell strong and spirituous liquors under any section of the excise law, passed April sixteenth, eighteen hundred and fifty-seven. Contents of report.

§ 3. Such report when so made as aforesaid, shall be verified by oath or affirmation of the said commissioners, or a majority of them, and shall contain a written statement indorsed thereon, signed by the county treasurers of the county, setting forth the whole amount of money paid over to them by said commissioners during the same year in which To be verified by oath.

PART I.

such report shall be made, and the said commissioners shall also report to said boards the whole amount of fines or penalties received by them in their official capacity from any and every person for any violation of the act entitled "An act to suppress intemperance, pauperism and crime," passed April sixteenth, eighteen hundred and fifty-seven, and in case said commissioners or either of them shall neglect or refuse to report as aforesaid, he or they shall forfeit and pay one hundred dollars for every such neglect or refusal, to the use of the people of the county in which he or they may reside.

§ 4. All acts and parts of acts inconsistent with the provisions of this act are hereby repealed.

CHAP. 161.

AN ACT to authorize clerks of boards of Excise to take affidavits and acknowledgments in certain cases.

PASSED April 8, 1862.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Clerks may
take affida-
vits, &c. §.

§ 1. The clerks of the several boards of Excise in this state, shall have the same power to take affidavits and acknowledgments of any instrument to be used before such boards, as justices of the peace; but they shall receive no fees for the same.

CHAP. 314.

AN ACT concerning Vessels lying in the Bay and Harbor of New York.

PASSED April 29, 1829.

The People of the State of New York, represented in Senate and Assembly do enact as follows:

Rev. Stat.
extended.

§ 1. The provisions of section tenth, Title tenth, Chapter twentieth of the First Part of the Revised Statutes, shall extend to the harbour of New York, embracing the Bay as far as the village of Castleton, on Staten Island, and thence up the east river as far as the south point of Blackwell's Island.

CHAP. 153.

AN ACT concerning vessels navigating the Niagara river,
Lake Ontario, and the River St. Lawrence.

PASSED April 4, 1837.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. The provisions of section twelfth, title tenth, chapter twentieth of the first part of the Revised Statutes, shall extend to the harbors and ports on Lake Ontario, and the rivers Niagara and St. Lawrence, within the jurisdiction of this state. Light to be put up by vessels at anchor in the night.

§ 2. Whenever any schooner, sloop or other vessel, shall be navigating any part of Lake Ontario, or the rivers Niagara and St. Lawrence, within the jurisdiction of this state, in the night time, the master of such schooner, sloop or other vessel, shall cause a good and sufficient light to be shown in some part of her rigging, at least twenty feet above her deck and from the taffril. By vessels sailing in the night.

§ 3. The provisions of sections ninth and tenth of title tenth, chapter twentieth of the first part of the Revised Statutes, shall extend and apply to every violation of the provisions of the preceding section. Penalty.

CHAP. 112.

AN ACT to protect Hudson and Poughkeepsie from fires
from steamboats.

PASSED March 29, 1839.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. It shall be the duty of every captain or other person having charge of a steamboat navigating the Hudson river, and of every engineer and fireman thereof, to cause the dampers in the pipes or chimneys of said boats to be closed, or in some other manner to prevent the escape of sparks and coals from said chimneys or pipes while passing through the eastern side of said river, opposite to or in front of the city of Hudson and village of Poughkeepsie, and while landing passengers or freight, and while lying at the docks or wharves of said city or village. Duty of steamboat commanders.

§ 2. Every such captain or other person having charge of such steamboat, and every engineer and fireman thereof, who shall violate the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by fine, not exceeding one hundred dollars, or by imprisonment, Penalty for neglect.

PART I.

not exceeding three months, or by both such fine and imprisonment.

Liability of owners.

§ 3. Every such person as aforesaid, and the owner or owners of such steamboats, shall be jointly and severally liable for all damages by fire occasioned by such violation.

CHAP. 175.

AN ACT to regulate the speed of steamboats.

PASSED April 15, 1839.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

[Sections 1 and 2 repealed by Laws of 1844, ch. 248.]

Penalty for boat racing and creating an undue quantity of steam.

§ 3. If the captain or any other person having charge of any steamboat navigating any waters, within the jurisdiction of this state, and used for the conveyance of passengers, or if the engineer or other person having charge of the boiler of such boat, or of any other apparatus for the generation of steam, shall, for the purpose of excelling any other boat in speed or for the purpose of increasing the speed of such boat, create or allow to be created an undue or an unsafe quantity of steam, every such captain, engineer, or other person shall be deemed guilty of a misdemeanor, and shall also for every such offence forfeit the sum of five hundred dollars, to be sued for, in the name of the people, by the district attorney of any county of this state, to whom notice shall first be given of such offence; the penalty, when recovered, shall be paid as follows: fifty dollars to the informer, and the residue into the county treasury of the county for which such district attorney shall have been appointed, for the use of the poor of the county, except that the court in which the recovery shall be had may order such portion thereof, not exceeding fifty dollars, as it shall deem just, to be paid to the district attorney, by whom the suit shall have been prosecuted as a compensation for his services, beyond the taxable costs to be recovered by him.

When penalties to be recovered of owners of boats.

§ 4. If any penalty incurred by any captain or master of any steamboat, or by any person having charge thereof, or by any engineer or other person having charge of the boiler of such boat, or of any other apparatus for the generation of steam, and the penalties of this act cannot be collected of them by a due course of law, the same may be recovered in like manner as against them, of the owners of the boat in whose employ they were at the time such offence was committed, jointly and severally, as if such owners were sureties of such captains, master, engineer or other person.

Certain sections of this act to be posted in

§ 5. It shall be the duty of the master of every steamboat navigating the waters of this state, to keep a copy of the third, fourth and fifth sections of this act posted in a conspi-

cuous place in such boat, for the inspection of all persons on board the same; and in case of a neglect to comply with this provision, he shall be liable to the penalty inflicted by the fourteenth section of title ten, of chapter twenty of the first part of the Revised Statutes, to be sued for and applied in the manner prescribed in such section.

CHAP. 65.

AN ACT to regulate the floating of rafts on the Hudson river.

PASSED March 20, 1841.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. All rafts of timber or lumber which shall be floated on the Hudson river at night shall show two red lights, one on each end of such raft; the height of such light shall not be less than ten feet from the upper logs or plank of said raft.

Red lights
to be shown
on rafts.

§ 2. The penalty for violating the foregoing section shall be the same as is provided for in section twelfth, Title ten, Chapter twenty, Part First of the Revised Statutes, and shall be sued for and recovered in the manner therein provided.

Penalty for
neglect.

CHAP. 248.

AN ACT to regulate the speed of steamboats, navigating the Hudson river.

PASSED May 2, 1844.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. No steamboat navigating the Hudson river, shall proceed or be propelled with greater speed than at the rate of six miles an hour, while such boat is passing any part of the public works constructing in said river, during the time the said public works are under construction by the government of the United States, for the improvement of the navigation thereof south of the city of Albany, and between the said city of Albany and the city of Troy. And no steamboat navigating said river, shall pass that part of said river opposite the docks, piers or wharves in the city of Albany with greater speed than at the rate of six miles an hour.

Restriction.

1 H., 469.

§ 2. If any master of any steamboat, or any person having the charge or command of any steamboat, shall violate, or cause or permit to be violated, the provisions of the preceding section of this act, he shall, for every such offence, forfeit the sum of one hundred dollars, to be sued for in the name

Penalty.

PART I.

of the people, by the district attorney of any county bordering on the waters of that part of the said river on which the offence shall have been committed, to whom notice shall first be given of the commission of such offence. The penalty, when recovered, shall be paid into the county treasury of the county for which such district attorney shall have been appointed, for the use of the poor of the county.

Repeal.

§ 3. The first and second sections of the act entitled "An act to regulate the speed of steamboats," passed April 15, 1839, are hereby repealed.

CHAP. 321.

AN ACT in relation to the navigation of the East river by steamboats.

PASSED April 12, 1848.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

To keep the
centre of
the river

§ 1. All the steamboats passing up and down the East river, between the battery at the southern extremity of the city of New York and Blackwell's Island, shall be navigated as near as possible in the centre of the river, except in going into or out of the usual berth or landing place of such steamboat, and shall not be propelled at a greater rate of speed than ten miles an hour.

Penalty for
violation.

§ 2. The master, pilot or engineer of any steamboat violating either of the provisions of the foregoing section, shall be deemed guilty of a misdemeanor, and in addition thereto, the master, pilot and engineer of such steamboat, shall respectively be liable to the penalty prescribed in section nine, title ten, chapter twenty of the First Part of the Revised Statutes, to be sued for and applied as therein directed.

CHAP. 411.

AN ACT requiring Steamboats or vessels propelled or driven by steam to carry small boats for the protection of life in case of accident.

PASSED April 11, 1849.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Steam ferry
boats to be
provided
with small
boats.

§ 1. Every ferry boat driven or propelled by fire or steam navigating any of the waters of this state, shall be provided with at least one small row or life boat, at least fifteen feet in length, attached to the ferry boat in such a manner that it can be launched into the water for immediate use in case of need, or in case of accident.

CHAP. XX.
Steamboats
carrying
passengers
shall have a
life boat
and row
boat.

§ 2. Every steam vessel, or steamboat, or vessel, or boat propelled or driven by steam or fire, navigating any of the waters of this state, of five hundred tons measurement, and carrying passengers shall be provided with at least one first class life boat, and one row boat twenty-five feet long by seven wide, capable of carrying or supporting fifty persons each, and at least one row boat of the usual size and construction, in addition thereto; and every steamboat or vessel driven or propelled by steam and fire, and navigating any of the waters of this state, of the measurement of two hundred and fifty tons burthen, and not exceeding five hundred tons burthen, and carrying passengers, shall carry at least two ordinary row boats, so attached as to be capable of being launched into the water in case of need or accident.

§ 3. Every violation of the provisions of this act shall be punishable by fine, not less than two hundred and fifty dollars, which may be sued for and recovered in any court of record in this state, in action against the captain of the boat or vessel, or the owner or owners, or either of them, to be sued for in the name of the treasurer of any county in which either the captain or the owner or owners, may be or shall reside.

Penalty for
violating
this act.

§ 4. It shall be, and is hereby made the duty of the district attorney of the county in which any such captain, owner or owners, may be or shall reside, to prosecute a suit for such penalty whenever there shall be presented to him a complaint showing a violation of this act, substantiated by the affidavit of the person so complaining, and the penalties so recovered shall be paid to the county treasurer for the support of the poor of said county.

District at-
torney to
prosecute.

§ 5. None of the provisions of this act shall be construed as in any manner repealing the act entitled "An act requiring compensation for causing death by wrongful act, neglect or default," passed December 13, 1847, or any part of said act.

Saving
clause.

CHAP. 556.

AN ACT in relation to Steamboat Excursions.

PASSED April 19, 1855; three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. That when a steamboat shall be employed for making an excursion of pleasure from the city of New York, on the Sound or on the Hudson river, it shall be the duty of the master of such boat to require of each male person who takes passage with him for such purpose, and who has arrived at the age of discretion, to give his name, and the place of his abode, namely: the number of the house, street and city in which he resides, and on his refusal so to furnish his name,

List of
names of
passengers
to be filed.

PART I.

not to permit him to take passage on such boat; and from the names so obtained, it shall be the duty of such master to make a list, and within five days after such excursion, to file the same in the office of the clerk of the city and county of New York, paying him for filing the same the sum of six cents; and it is hereby made the duty of such clerk to receive, file, and safely keep such list in his office, marking on the back thereof, the name of the steamboat, the date of the excursion, and the time of filing the same; provided, that this section shall not apply to any regularly plying ferry boat.

Penalty for
omission to
make list.

§ 2. For a neglect by the master to comply with the directions hereinbefore contained, he and the owner or owners of the boat, or either of them, shall be subject to a penalty of one hundred dollars, to be sued for in any court having cognizance of the offence, by any person aggrieved in the matter, the one-half of which penalty, when recovered, to be paid to the plaintiff in such suit, and the other half to the overseers of the poor of the town in which the person aggrieved shall reside.

Passengers
not to tres-
pass.

§ 3. Each and every person engaging in such excursion, who shall invade and enter upon the lands and possessions of any owner or occupant residing on or near the banks of the Sound or of the Hudson river, and shall roam about the grounds, orchards and gardens, and help himself to fruit or whatever may seem desirable, without previous leave obtained, shall, in addition to an indictment for the trespass, and to a personal action for damages, incur the penalty of ten dollars, to be sued for by the party aggrieved, one-half thereof, when collected, to be paid to such party, and the other half to the overseers of the poor.

CHAP. 20.

AN ACT in relation to the cutting of ice in the Hudson river.

PASSED February 11, 1860; three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Cuttings in
ice to be
surrounded
by fence of
bushes.

§ 1. All persons and incorporated companies cutting ice in, or removing the same from the waters of the Hudson river in this state, and the tide waters of the Rondout and Catskill creeks, are hereby required to surround the cuttings and openings made by them, or their employees, with a fence of bushes or other guards at least four feet in height above the surface of the ice sufficient to warn all persons of such cuttings and openings: Such bushes and guards shall be erected at or before the time of commencing such cuttings and openings, and shall be maintained and kept up by such persons or incorpo-

rated companies, until ice shall have again formed in such cuttings and openings, to the thickness of at least six inches.

§ 2. Any person violating any of the provisions of this act, shall be guilty of a misdemeanor, and on conviction thereof shall be imprisoned in the county jail, for the period of not less than five, nor more than thirty days; or be fined a sum not less than ten, or more than one hundred dollars, or by both such fine and imprisonment.

Penalty for violation.

CHAP. 121.

AN ACT for the appointment of a commission for the preservation of the harbor of New York from encroachments, and to prevent obstructions to the necessary navigation thereof.

PASSED March 30, 1855; three-fifths being present.

Whereas, It is represented to the legislature that the harbor of New York has become much obstructed by the erection of piers, wharves, and bulkheads, and by other causes, and that grants of rights to occupy land under its waters have been made, and are liable to be made, without sufficient information of the extent of the injury that may be inflicted by such occupation, by narrowing the channel, and otherwise; with the view, therefore, of obtaining the proper information to enable the legislature to control such erections, and prevent such injury:

Preamble.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. A board of commissioners, to be appointed by the governor, to consist of five citizens of the United States, and of citizens who shall at any time hereafter be appointed in their place, or in the places of any of them, is hereby created, who shall have power, and whose duty it shall be:

Commissioners.

1. To cause the necessary surveys and examinations of the said harbor, and the adjacent lands, to be made by skillful persons, and to obtain all needful information from other sources, in order to ascertain the present condition of the said harbor, particularly whether the navigation thereof is improperly obstructed, and whether, in reference to the present and probable future commerce of the cities of New York and Brooklyn, any further extension of piers, wharves or bulkheads, into the said harbor, ought to be allowed, and to what extent; and whether any grants already made by the legislature, or the commissioners of the land office, or the common council of the city of New York, for the filling up of any land under water of the said harbor, will, if executed, impair or obstruct the necessary navigation of the said harbor:

Surveys and examinations.

2. To report to the legislature from time to time, and as

Report.

PART I.

soon as practicable, and at least by the second Tuesday of January next, the result of the information thus obtained, and the evidence upon which the same shall be founded :

Exterior
lines.

3. To recommend, submit and present to the legislature, the establishment of such exterior lines, in different parts of the said harbor, opposite and along the water fronts of the cities of New York and Brooklyn, the county of Kings and county of Richmond, and beyond which, no erection or permanent obstruction of any kind should be permitted to be made :

Recommen-
dations as
to piers,
slips, &c.

4. To recommend to the legislature such provisions as the said commissioners deem necessary, in respect to the enlarging or filling up of slips, coves and recesses ; the size, position and extent of piers, wharves, bulkheads or other erections or improvements within the exterior water line, and a suitable rate of wharfage for vessels using the same, and the laying out and establishing such piers and wharves, and leaving open space between and under them, and in respect to any and every matter and thing calculated to preserve forever the free navigation of said harbor :

Maps.

5. To have prepared and submit with their report, maps of the said harbor, exhibiting the exterior lines recommended by them, and the lines of the existing piers, wharves and bulkheads, and of any grants of land under water in the said harbor which have not been occupied, and also the original shore line, as far as the same can be ascertained, accompanied with such field notes, measurements and elucidations, as they shall deem necessary to a full exposition and understanding of the subject :

Water line
and boun-
dary be-
tween
counties.

6. To enquire and report upon the propriety of laying out on the East river, a street on the permanent water line in the city of Brooklyn, to be called West street ; also, to report upon the power, practicability and utility of establishing a boundary line for the counties of Kings, Queens and New York, in the East river.

Land under
water not
to be
granted.

§ 2. No grants of land under the waters in respect to which the said commissioners are herein required to report, shall be made by the commissioners of the land office or of the common council of the city of New York, or by any board, officer or corporation, until the further direction of the legislature in the premises. And the said commissioners may, by their order in writing, restrain and stay all proceedings, until the further direction of the legislature, by virtue of any grant of land under the said waters heretofore made, and all permanent erections in, or obstructions of the said waters, which in their judgment may interfere with or embarrass the establishment of such exterior lines as they shall deem proper to recommend to the legislature, which order shall be enforced, and disobedience thereof shall be punished by the supreme court in the second judicial district, at any special or general term thereof, in the same manner and to the same extent as in cases of injunctions issued out of such court. And any per-

manent erection or obstructions made contrary to any such order, may be removed and abated by the said commissioners.

§ 3. The said commissioners shall take and file in the office of secretary of state, the oath of office prescribed in the constitution, before entering on the duties of their appointment. They shall not be or become interested, directly or indirectly, in any water rights, or rights to occupy land under water in the said harbor, nor in any real estate that can in any way be benefited or affected by the establishment of the said exterior lines, or by any measures they may recommend. And on proof being made to the governor of any of said commissioners being so interested, and upon a hearing of the party so charged, he may be removed from office by the governor.

Oath of office.

§ 4. Any vacancies in the board of commissioners, caused by removal, resignation, refusal to serve, or otherwise, shall be filled by the appointment of the governor of a citizen not interested as aforesaid.

Vacancies.

§ 5. The acts of a majority of the board of commissioners, at any meeting of the whole number, or at any meeting of four members held pursuant to adjournment, shall be deemed to be the acts of the board, and shall be deemed valid as such.

Quorum.

§ 6. The said commissioners may employ surveyors, agents, workmen, and others necessary to the discharge of their duties; and they and their agents and servants may enter upon any land for the purpose of surveying or obtaining any information on the subject of their appointment.

Surveyors and agents.

[Sec. 7. Temporary.]

CHAP. 671.

AN ACT to establish regulations for the port of New York.

PASSED April 16, 1857.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. It shall not be lawful for the captain, mate or any person on board of any steamboat, to throw or cause to be thrown into the waters of the port of New York, below Spuyten Duyvel creek, on Hudson river, or below Throgs point on the East river, nor in the bay inside of Sandy Hook, any cinders or ashes from such steamboat, under the penalty of twenty-five dollars for each and every offence, recoverable by the commissioners hereinafter named, and for such penalty the steamboat from which such cinders or ashes were thrown, shall be liable.

Deposits of cinders and ashes.

§ 2. "The Board of Commissioners of Pilots" in the city of New York, appointed in pursuance of an act entitled "An act to provide for the licensing and government of the pilots, and regulating pilotage of the port of New York," passed June

Commissioners of pilots.

PART I.

twenty-eighth, eighteen hundred and fifty-three, shall be the commissioners under this act.

Ballast
upon pier.

§ 3. It shall not be lawful for any person to throw any ballast, rubbish, ashes or cinders from any vessel, or from any pier or bulkhead into the waters of the docks, slips or harbor of the port of New York, unless to discharge the same immediately into carts. Any person who shall violate any of the provisions of this section shall forfeit and pay to the commissioners the sum of five dollars, and the further sum of two dollars for each and every cubic yard of material so thrown out, and such fine shall be a lien until paid upon any vessel from which such material shall be thrown or discharged.

As amended by Laws of 1858, ch. 226.

Penalty.

§ 4. Every person wilfully throwing or putting any stones, earth, shavings, night soil, dirt or rubbish into any dock or slip in the port of New York, or on any public pier or bulkhead in said port, shall forfeit and pay to the commissioners the sum of twenty-five dollars for each offence; one-half of all fines recovered under this section shall be for the use of the person or persons lawfully entitled to the occupation of such docks, slips or piers. Whenever any horse or cart shall be employed in dumping stones, earth, shavings, night soil, dirt or rubbish into any dock or slip or on any public pier of the port of New York, the fine prescribed by this section shall be a lien until paid upon such horse and cart.

As amended by Laws of 1858, ch. 226.

Duty of
owners.
&c. in un-
loading bal-
last, &c.

§ 5. It shall be the duty of every owner, master, mate, or other person having the charge or management of any vessel from which, or into which, ballast, coal, cinders, stones, bricks, tiles, dung, or any loose matter or thing, shall be conveyed, to fasten canvas, mats or cloths, between the pier or bulkhead and vessel, and between vessels lying along side each other, to or from which such ballast or other loose material shall be conveyed, so as to prevent any part thereof falling into the waters of the port; and if to be landed, to place such material at least two feet from the edge of the pier or bulkhead, under the penalty of ten dollars for the violation of any of the provisions of this section, and for each offence, to be paid to the commissioners; and such penalty shall be a lien, until paid, on the vessel from which such ballast, coals, cinders, stone, brick, tiles, dung, or other matter or thing, shall be so conveyed or landed.

As amended by Laws of 1858, ch. 226.

Unloading
of metals.

§ 6. It shall not be lawful to throw iron, lead, or any metal, or any package of merchandise weighing over fifty pounds, from a vessel on to a pier in the port of New York, without adequate protection to the planking of such pier, under the penalty of five dollars for each offence, to be paid to the commissioners, and to be a lien on the vessel until paid; nor shall it be lawful for any person or persons to draw or cause to be

drawn, or trail or drag over any pier in the port of New York, any anchor or blocks of stone, otherwise than upon carts, rollers, wheel carriages or sleds, under the penalty of five dollars for every offence, one-half of which shall be for the use of the person or persons lawfully entitled to the occupation of such pier.

As amended by Laws of 1858, ch. 226.

§ 7. When any slip, or basin, or shoal in the port of New York, shall be dredged or excavated, it shall be the duty of the person or persons causing the same to be dredged, to cause the sand, mud, or other material to be removed and deposited in some place above high water mark, or be deposited within a bulkhead for filling, or in some place to be approved by the said commissioners; and any person violating the provisions of this section shall forfeit and pay to the said commissioners the sum of five dollars, one half of which shall be retained by the commissioners for every cubic yard removed.

Dredging of slips.

§ 8. Whenever any pier or bulkhead in the port of New York shall be encumbered, or its free use interfered with by merchandise, lumber, or any other obstruction, whether of loose material, or built upon or affixed to the pier or bulkhead, it shall be the duty of the commissioners to notify the person or persons placing or keeping such merchandise or obstruction on such pier or bulkhead, to remove such merchandise or obstruction within twenty-four hours after such notice; and in case of failure to comply with such notice, and to remove such merchandise or obstruction, the person or persons so notified shall be liable to pay to the commissioners the sum of twenty-five dollars for each and every day during which such merchandise or obstruction shall remain on such pier or bulkhead; and the commissioners shall have power, in their discretion, to remove any merchandise so encumbering any pier or bulkhead, and to store the same in a warehouse or other proper receptacle; and a sum equal to the amount of the expenses of removal, together with the charges for storage, shall be paid by the owner of such merchandise to the commissioners, and shall be a lien on such merchandise until paid.

Encumbering of piers.

As amended by Laws of 1858, ch. 226.

[§ 9 repealed by Laws of 1862, ch. 428.]

§ 10. At the expiration of every six months it shall be the duty of the said commissioners to advertise, for one week in three or more daily papers in the cities of New York and Brooklyn, the merchandise which they have stored and which has remained unclaimed, setting forth the marks and numbers of each package, the description of the merchandise, the pier whence such merchandise was removed and the date of such removal, and if any of such merchandise so advertised shall remain thereafter unclaimed for three months, the said commissioners may then sell the same, after further advertisement

Advertising of unclaimed merchandise.

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for one week in three or more of the daily papers published in the cities of New York and Brooklyn, at a public auction, to the highest bidder, to pay the expenses which have been incurred on such merchandise, and the remainder shall be held in trust by the said commissioners for the owner or owners thereof, for twelve months, when if not claimed it shall form part of the fund of said commissioners.

**Cleaning of
piers, &c.**

§ 11. It shall be the duty of said commissioners to require the lessees or occupants of the public piers and bulkheads in the cities of New York and Brooklyn, to keep the said piers and bulkheads clean and in good repair; and they shall specify in such notice the particulars of the repairs required by them to be made; and if when so notified to clean and repair any public pier or bulkhead, the lessee or occupant shall refuse so to do in accordance with the notice and specification of the commissioners, he shall be liable to pay to the said commissioners a fine of five dollars for each and every day during which he shall neglect or refuse to clean or repair such pier or bulkhead.

As amended by Laws of 1858, ch. 226.

**Buoys and
beacons.**

§ 12. Any person mooring any vessels to any of the buoys or beacons placed in the harbor of New York by the United States light house board, or in any manner hanging on with a boat or vessel to any such buoy or beacon in said harbor, shall forfeit and pay to the commissioners of the port the sum of fifty dollars for every offence; and any person who shall wilfully remove any such buoy or beacon, shall be deemed guilty of a misdemeanor, and in addition to the punishment which may therefor be inflicted, he shall forfeit and pay to the said commissioners the sum of two hundred and fifty dollars for every offence.

Fish poles.

§ 13. It shall not be lawful, except in cases now provided by law, for any person to erect or drive in the soil under water in the harbor of New York, any poles for the purposes of fishing, where the water is of greater depth than six feet at mean low tide, under the penalty of five dollars for each pole erected or driven contrary to the provisions of this section; and it shall be the duty of the said commissioners to cause the same to be removed.

Lighters.

§ 14. It shall be the duty of the owner or owners of every lighter engaged exclusively in the business of lightering in the port of New York, to cause the name and place of business of one of the owners thereof to be painted in letters at least three inches long on the sides of his lighter; and in default thereof he shall forfeit and pay to the said commissioners the sum of five dollars; and for each and every week the owner of said lighter shall neglect to cause his name so to be painted on his lighter, after being notified, he shall forfeit and pay the sum of ten dollars.

Violations.

§ 15. It shall be the duty of the harbor masters and pilots of the port of New York to report to said commissioners all

violations of this act, which may come to the knowledge of said harbor masters or pilots, or which may be made known to them by complaint or otherwise.

§ 16. The act entitled "An act to amend the act entitled an act relating to the harbor masters of the port of New York, passed March sixteenth, eighteen hundred and fifty," passed April seventeenth, eighteen hundred and fifty-one, is hereby repealed.

§ 17. All fines and penalties incurred and recovered under this act, which are recoverable by or in the name of the commissioners under this act, shall be paid, except as otherwise provided in this act, into the treasury of this state, and the treasurer shall keep account of the same, and he shall pay to the said commissioners annually the expenses incurred, and hereafter to be incurred, by the said commissioners under the act, to be certified to him by the president and secretary of said board, not exceeding five thousand dollars per annum, and the further sum of five thousand dollars, to be divided between them as follows: to the president of the board the sum of two thousand dollars, and to each of the other commissioners the sum of seven hundred and fifty dollars per annum.

Fines and
penalties.

As amended by Laws of 1858, ch. 226.

§ 18. All the fines and penalties incurred under this act shall be recoverable by and in the name of the said commissioners.

In all cases when the fines and penalties prescribed by this act are made liens upon property they shall be enforced by attachments issued by the court where the proceedings for the recovery of such fines and penalties shall be pending to the officers to whom executions of such courts are issued, and shall be enforced and discharged in like manner as attachments against property of non-resident debtors, and the said commissioners shall have power, in their discretion, to remit any fines or penalties incurred under this act.

For the purposes of this act all piers and bulkheads shall be deemed and taken as extending into the adjoining streets in the rear a distance of six feet.

As amended by act of 1858, ch. 226.

CHAP. 763.

AN ACT to establish bulkhead and pier lines for the port of New York.

PASSED April, 17, 1857.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. The bulkhead line or line of solid filling, and the pier line, adjacent to the shores of the port of New York, are here-

Lines es-
tablished.

PART I.

Sea wall.

Erection of piers.

Description of line of sea wall.

by declared and established to be the bulkhead and pier lines recommended to the legislature by the commissioners appointed under the act entitled, "An act for the appointment of a commission for the preservation of the harbor of New York from encroachments, and to preserve the necessary navigation thereof," passed March thirty, eighteen hundred and fifty-five, in their reports of January twenty-seven, eighteen hundred and fifty-seven, and March eighteen, eighteen hundred and fifty-seven, and as laid down on the maps accompanying said reports, entitled "Atlas of New York harbor, made under the direction of the harbor commission," in two volumes, except that the exterior or pier head line from Ninth street extended to Forty-ninth street, on the New York side of East river, shall be the same as in the line recommended by the committee of commerce and navigation of the senate, in their report of March seventeen, eighteen hundred and fifty-six, and on the maps hereinafter referred to, in red ink; and a sea wall shall be erected on that line from the north-east corner of the bulkhead at the foot of Seventeenth street, to Thirty-eighth street, with openings of not less than one hundred feet, and at distances of not less than four hundred and fifty feet apart from centre to centre; and the whole water space between the bulkhead line hereby established, and the sea wall between Seventeenth and Thirty-eighth streets, shall be appropriated for piers, on piles or blocks and bridges, and wet basins, and a continuous bulkhead from Thirty-eighth to Forty-ninth street, which bulkhead shall be the exterior line, and line of solid filling; but no pier, or other erection or structure, shall be made outside of the said sea wall or bulkhead from Seventeenth to Forty-ninth street, that is to say:

1. Maps of the shores of the city and county of New York.
2. From a point one mile north of Spuyten Duyvil creek, on the east shore of the Hudson river; thence southerly to the entrance and along the north shores of Spuyten Duyvil creek and Harlem river, and easterly along the north shore of the East river, to Throg's Neck, in the county of Westchester.

3. From the entrance to Little Neck bay, in the county of Queens, westerly along the south shore of the East river, including Flushing and Gowanus bays, and Newtown creek, to the westerly end of Coney island, in the county of Kings.

4. The easterly shore of the county of Richmond, to the entrance of the Kill van Kull, and thence along the southerly shore of the Kill van Kull, and the southerly and easterly shores of Arthur's kill, or Staten Island sound, to a point opposite to the entrance of Woodbridge creek, in the State of New Jersey.

5. From the middle of the Kill van Kull, at its entrance from the bay of New York; thence northerly along the westerly shore of the said bay, and along the westerly shore of

the Hudson river, in the State of New Jersey, to a point opposite to the entrance of Spnyten Duyvil creek.

6. The several islands in the harbor of New York.

§ 2. It shall not be lawful to fill in with earth, stone, or other solid material in the waters of said port, beyond the bulkhead line or line of solid filling hereby established, nor shall it be lawful to erect any structure exterior to the said bulkhead line, except the sea wall mentioned in the first section of this act, and piers which shall not exceed seventy feet in width respectively, with intervening water spaces of at least one hundred feet, nor shall it be lawful to extend such pier or piers beyond the exterior or pier line, nor beyond, or outside of the said sea wall. Filling in.

§ 3. It shall be the duty of the said commissioners, within thirty days from the passage of this act, to verify by their signatures, and to file in the office of the secretary of state, there to remain of record the aforesaid maps, together with a minute written description, by courses and distances, as far as practicable, of the aforesaid lines in front of the cities of New York and Brooklyn, verified in like manner, and file a copy of the description of the said courses and distances in the office of the street commissioner of the city of New York, and the term of the said commissioners is hereby extended to the fifteenth day of May next. Maps.

CHAP. 522.

AN ACT to prevent encroachments and obstructions in the harbor of New York, and to authorize their removal, and to correct the harbor commissioners' lines.

PASSED April 27, 1860; three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. It shall not be lawful to obstruct or interrupt the navigation of the waters of the port and harbor of New York by any incumbrance whatever; and in case of any such obstruction or interruption by reason of any sunken vessel or other thing, the board of commissioners of pilots shall notify the owner or owners of such vessel or thing, if such owner or owners are within the city and county of New York, and are known to them, to remove the same within three days after such notice; and in case such owner or owners are not known to the said board of commissioners of pilots, or are not within the said city and county of New York, or fail to comply with such notice, the said board of commissioners of pilots shall cause the said obstructions to be removed, and the expenses of such removal shall be paid by the county within whose Port and harbor of New York to be kept clear of obstructions.

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jurisdiction such vessel or thing shall be, and shall be recoverable from the owner or owners of such vessel or thing, by and in the name of the board of supervisors of such county; such expenses shall also be a lien on the vessel or thing so removed, until paid.

Piers, bulkheads or other structures may not be built or suffered to remain beyond certain limits.

§ 2. It shall not be lawful for any person to build, erect or maintain any pier, bulkhead, or other structure, or to fill in with earth or other material, in the waters of the harbor of New York, beyond the exterior line defined and recommended by the commissioners for the preservation of the harbor of New York, and established in and by chapter seven hundred and sixty-three, of the Session Laws of eighteen hundred and fifty-seven; and in case of the building or erection of any such pier, bulkhead or other structure, or of maintaining of any such pier, bulkhead or other structure, whether now existing or hereafter erected, the board of commissioners of pilots shall notify the person or persons building, erecting or maintaining the same, within a time to be prescribed and specified in their notice; and in case of failure to comply with such notice, the said board of commissioners of pilots shall have the power to cause so much of such pier, bulkhead or structure, as is beyond the exterior line so defined and established, to be forthwith removed, and the person or persons who built or maintained the same shall be liable to pay all expenses of such removal, to be recoverable by and in the name of the board of commissioners of pilots, and shall also pay a fine of twenty-five dollars a day, for each and every day during which such obstruction shall remain after such notice, and until such pier, bulkhead or other encroachment shall have been removed, as herein provided. This section shall not apply to piers or bulkheads built before the establishment of said exterior line.

§ 3. The act entitled "An act to establish bulkhead and pier lines for the port of New York," passed April seventeenth, eighteen hundred and fifty-seven, is hereby amended so as to read as follows:

Line of bulkhead and pier.

The said bulkhead and pier line shall be altered so as to read as follows: Beginning at an angle in the exterior water line, of land under water, granted to Gouverneur Morris, of Morrisania, in the county of Westchester, by the commissioners of the land office of this state, which angle in said line is distant five hundred and thirty feet southeasterly at right angles from a projection northeasterly of the southeasterly side of First avenue, in the village of Port Morris, and distant three hundred and forty-two feet northeasterly from a projection southeasterly of the northeasterly side of First street, in said village; thence running northeasterly, on a curve, nearly parallel to the said bulkhead and pier line, ten hundred feet, to a point in the East river, which is distant one hundred feet outside of low water mark; opposite a point of rocks east of Port Morris; thence running northeasterly parallel to the

said bulkhead and pier line, seven hundred feet; thence northeasterly in a straight line, eleven hundred feet more or less, to a point in the said bulkhead and pier line which is in front of a point of rocks projecting into the river next westerly of Rutgers Point, as the same is laid down on the Harbor Commissioners' map, now on file in the office of the Secretary of State.

CHAP. 69.

AN ACT concerning the pilots of the channel of the East river, commonly called Hellgate.

PASSED April 15, 1847.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. There shall be appointed, in manner hereinafter directed, fit and proper persons to act as pilots, for the safe pilotage of vessels through the channel of the East river, commonly called Hellgate, who shall be known as Hellgate pilots and hold their offices during good behavior; and all those who are now pilots by the way of Hellgate, shall be considered as pilots under this act. Pilots to be appointed.

§ 2. All pilots hereafter to be appointed, shall be appointed by the governor, by and with the consent of the senate, and shall be commissioned by the governor, in like manner as all other persons appointed to office by him with the consent of the senate. It shall be the duty of the board of wardens of the port of New York, to recommend such suitable and experienced persons to act as such pilots, as shall apply for such recommendation, and to make a list of the person or persons so recommended; which list shall be transmitted to the governor of the state, whose duty it shall be to present the same to the senate, for their confirmation or rejection. And in making the selection of names for said list, they shall be chosen first from those now acting as deputy pilots; and secondly from those now acting as apprentices, who have served the time required by their indentures of apprenticeship, and who have passed or shall pass the necessary examination, and shall have acted for two years as deputy pilots; and thirdly from those who are now apprenticed, after they shall have served the time required by their indentures, passed the requisite examination, and acted for two years as deputy pilots. To be commissioned on recommendation of wardens.

All apprentices shall hereafter serve as such for the period of three years, and until they attain the age of twenty-one years, and shall act two years in addition as deputy pilots after that period, and after they have passed the requisite examination, and received from the board of wardens a certifi- Apprentices and deputy pilots.

PART I.

cate entitling them to serve as such deputy pilots ; all apprentices shall hereafter be examined twice during the last year of their apprenticeship, before the board of wardens of the port of New York, whose duty it shall be to examine said apprentices, in the presence of at least two of the Hellgate pilots, who shall be invited to attend at, and assist in said examination ; and the indentures of all apprentices under this act, shall be filed in the office of the board of wardens, within ten days after the same shall have been executed.

Wardens to
establish
rules.

§ 3. The board of wardens of the port of New York, shall have power and authority, to make and establish such rules, orders and regulations, not inconsistent with the constitution and laws of this state, or of the United States, or of the provisions of this act, for the better government of said pilots ; and with such fines and penalties for the breach thereof, as the said board of wardens may from time to time direct ; and to revoke, annul or alter the same as often as they may deem proper and expedient. Said board of wardens shall have such rules, orders and regulations entered at length upon the minutes of said board, and shall furnish to each of said pilots a copy of said rules, orders and regulations, and shall furnish each of said pilots with a copy of any additional rule, order or regulation, or of any abrogation, alteration or amendment thereof.

To have cog-
nizance of
complaints.

§ 4. Said board of wardens shall have cognizance of all complaints made against any or either of said pilots, for official misconduct. Upon the reception of any complaint as aforesaid, against either of said pilots, it shall be the duty of said board of wardens, to furnish the pilot complained of with a copy in writing, of said cause of complaint ; which copy shall contain, as near as may be, a full specification of the charges preferred against said pilot, with a notice affixed thereto, of the time (not less than six days) and place, when they, the said board of wardens, may or shall require said pilot to appear before said board, to answer the charges made against him ; but no charges shall be received, unless the same is verified by the oath of the person preferring the same. Upon said pilot appearing before the board of wardens, it shall be their duty to take testimony and to examine into the facts and circumstances of the case, and if after a full hearing of the case, and of competent proof, tending to establish said charge, a majority of the whole board of wardens shall deem said pilot guilty of official misconduct, they the said board of wardens, shall have full power and authority to suspend said pilot. It shall be the duty of said board of wardens, to transmit to the governor of this state, within ten days after such suspension, a full account of their proceedings in the premises, with a copy of the complaint and specifications, and also a copy of the testimony taken in the case. It shall be the duty of the governor, upon a review of the whole matter, either to remove the said pilot from office, or to annul or confirm his

suspension, as to him shall appear just and proper in the premises.

§ 5. It shall be the duty of the said pilots to keep two or more good and sufficient deck boats, of not less than twenty tons burthen, on the East river, and no more than seven pilots shall be interested in one deck boat, and no apprentice shall be taken by the said Hellgate pilots, but in the said deck boats; and no person who is not a regularly licensed Hellgate pilot, shall own any part of any boat engaged in the said pilot business, under pain of a forfeiture of such parts or shares owned by him, to be sued for and recovered by the said board of wardens; and all deck boats belonging to said Hellgate pilots, shall be registered in the office of the said board of wardens.

Pilots to keep two or more deck boats.

§ 6. It shall be lawful for any such pilot to demand and receive from any person who shall employ any of them to pilot any vessel of the burthen of ninety-five tons and upwards, or from the consignee or owner of said vessel, from the eastward of Sand's Point or Execution Rocks, or take charge of any such vessel, at or to the eastward of Sand's Point or Execution Rocks, and pilot her to the port of New York, or to pilot her from the port of New York to Sand's Point or Execution Rocks, for every vessel, one dollar and fifty cents for each and every foot of water such vessel may draw; and from the eastward of Hellgate to the port of New York, one dollar for each and every foot of water such vessel may draw; and for pilotage from the port of New York to the eastward of either of the before mentioned points or places, they shall be entitled to receive the same compensation as is above provided when the said vessel is bound to the port of New York. And every pilot shall, for such services, be entitled, in addition to the above mentioned rates of compensation, to demand and receive the further sum of twenty-five cents for each and every foot of water which any square rigged vessel may draw, which they shall pilot to or from the port of New York; and every such pilot who shall have piloted any ship or vessel into the port of New York by the way of Hellgate, shall be entitled to a preference in piloting the said ship or vessel out of the said port on the next outward voyage of the said ship or vessel, if the said voyage be by the way of Hellgate. And further, from the first day of November, to the first day of April in every year, every such Hellgate pilot shall be entitled to demand and receive for every ship, barque or brig, the sum of two dollars, and for every schooner or sloop, the sum of one dollar, in addition to the rates of compensation for pilotage hereby established. And every master or commander of any vessel, who shall give to such Hellgate pilot, an untrue account of the draft of water or tonnage of his vessel, shall forfeit and pay the sum of twenty-five dollars, to be sued for and recovered by the said board of wardens.

Rate of pilotage to be charged.

§ 7. Any of said Hellgate pilots, who shall first tender his

Rights of pilot first

PART I.
tendering
his service.

services, may demand and receive from the master, owner or consignee of any vessel of the burthen of ninety-five tons and upwards, navigating the said channel of Hellgate, to whom he shall have tendered his services as a pilot, and by whom the same shall be refused, whether inward or outward bound, one-half pilotage for every foot of water such vessel may draw, which half pilotage shall be the one-half of the rates of compensation established by the sixth section of this act. But such half pilotage shall not be chargeable to any vessel under ninety-five tons burthen, sailing under a coasting license, and shall not be chargeable more than once for the same passage to any vessel. And in case any such vessel under ninety-five tons burthen, navigating the said channel to or from the port of New York, shall make the usual signal for a pilot, and shall refuse to receive on board or employ such pilot, when he shall have tendered his services, then the master, owner or consignee of such vessel shall pay to such Hellgate pilot, such half pilotage from the place at which such pilot shall have so offered his services.

And any pilot who shall pilot any government vessel through the said channel, shall be entitled to receive the same compensation therefor, as is now provided by law for like services, in piloting such vessel to or from the port of New York by the way of Sandy Hook.

Allowance
for extra
service.

§ 8. The master, owner or consignee of any ship or vessel to whom any Hellgate pilot shall have rendered, upon the request of the master of said ship or vessel, any extra service for the preservation of said ship or vessel, while in distress, shall pay to said pilot, in addition to the compensation set forth in the sixth section of this act, such amount for extra services as the board of wardens shall determine to be a reasonable reward; and for every day which any Hellgate pilot shall be detained on board any ship or vessel, over and above twenty-four hours, he may demand and receive from the master, owner or consignee of said vessel, two dollars a day for each and every day he shall be so detained.

None but
Hellgate
pilots to
convey ves-
sels
through
Hellgate.

§ 9. If any person other than a Hellgate pilot shall pilot or tow for any other person, any vessel of any description, or board such vessel for that purpose, except barges, vessels of less than ninety-five tons burden, and canal boats actually used in navigating the canals, or shall offer to pilot or tow any such vessel, in the channel of the East river, commonly called Hellgate, without the aid of a branch pilot on board, he shall forfeit and pay the sum of thirty dollars for every such offence, to be sued for and recovered by the board of port wardens of the port of New York, for the benefit of the Hellgate pilots, and shall also be deemed guilty of a misdemeanor, and on conviction thereof, shall be punished for such offence; but nothing in this act shall be construed to prevent one of the crew of the vessel from piloting said vessel through

the aforesaid channel, nor impair or affect the seventh section of the act hereby amended.

As amended by Laws of 1860, ch. 64; 1 Hilt., 271.

§ 10. This act shall not be construed to apply to steam-boats. Steamboats

§ 11. All acts or parts of acts as are inconsistent with the provisions of this act, shall be, and the same are hereby repealed. Repeal.

CHAP. 467.

AN ACT entitled "An act to provide for the licensing and government of the pilots, and regulating pilotage of the port of New York."

PASSED June 28, 1853.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. There shall be, in the city of New York, a board, entitled "The Board of Commissioners of Pilots," consisting of five persons, to be elected as soon as convenient after the passage of this act, and to hold their offices, respectively, for two years from the time of their election, and until others shall be elected. Board of commissioners.

§ 2. Three of such commissioners shall be elected by the members of the chamber of commerce of the city of New York, at a meeting to be called for the purpose, to be specified in the notice for the meeting; and the certificate of the secretary of that body, or other officer regularly performing his duties for the time being, shall be prima facie evidence of such election. Three commissioners to be elected by chamber of commerce.

§ 3. Two other of such commissioners shall be elected by the presidents and vice-presidents of the marine insurance companies of the city of New York, composing or represented in the board of underwriters of said city, at a regularly convened meeting of such board, on the notice of their secretary, stating that the election of commissioners will take place, or of some member of the board, by them duly authorized, given in writing, at least one day before the election, stating that the election of commissioners will take place, and delivered at the office of such company. Each insurance company represented at such meeting shall be entitled to one vote, and the certificate of the secretary of such board, or of any officer acting in his stead, shall be sufficient prima facie evidence of an election. Two by the board of underwriters.

§ 4. Upon the expiration of the term of office of any commissioner or commissioners, or within thirty days prior thereto, and upon any vacancy occurring by death, resignation, removal from the state, or other cause, another election for the term of two years shall be made by the same class of per- Election in case of vacancy of commissioners.

PART I.

sons, or authority, as that which made the election to the office so expiring or becoming vacant.

Oath of office.

§ 5. Each commissioner, before entering upon the duties of his office, shall take the usual oath of office before an officer authorized to administer oaths, which oath or affirmation shall be filed, without delay, in the office of the clerk of the city and county of New York.

Secretary.

§ 6. The commissioners shall appoint a secretary, who shall take a like oath, to be filed in like manner as provided in section five; and they may remove him at any time and appoint another, and shall prescribe his duties and compensation.

Office to be established.

§ 7. The board shall establish an office in some convenient and proper place in the city of New York, where the commissioners shall meet on the first Tuesday of every month, and as much oftener by adjournment, or upon a notice given by any one of them, or by the secretary, as circumstances may require.

Duties of secretary.

§ 8. The commissioners shall require their secretary in person, or by deputy, to be in daily attendance at their office on all ordinary business days, during reasonable office hours, and shall cause to be kept by him a proper book or books, in which shall be written all the rules and regulations made by them, and all their official transactions and proceedings, and whatever else may be deemed by them proper and useful and immediately pertaining to their duties or to the pilot service. They shall also cause to be kept, by their secretary, a register of the names and places of residence of all the pilots who may be licensed by virtue of this act, with the dates of their licenses respectively, and such books may be inspected by any person interested.

Licensing pilots.

§ 9. The commissioners, or a majority of them, shall with all convenient speed proceed to license, for such term as they may think proper, so many pilots as they may deem necessary for the port of New York; and such commissioners may specify in such licenses different degrees of qualifications appropriate to different parts or branches of duty, according to the competency of the applicant. No license shall be granted to any person holding any license or authority from or under the authority or laws of any other state, and the said commissioners, or a majority of them, shall have the power and authority to revoke and annul the license of any person so licensed by them to act as pilot who shall not be attached to a boat approved of by said board, or who shall be guilty of any intoxication or other misconduct while on duty.

As amended by Laws of 1854, ch. 196.

Examination to be made before granting license.

§ 10. It shall be the duty of the said commissioners, before they shall grant a license to any person applying therefor to act as pilot in pursuance of this act, within one week thereafter to call such applicant before them, and in presence of one or more of the pilots of the said port, licensed to pilot

vessels to and from the said port by the way of Sandy Hook, who shall be notified to attend for the purpose, and who are hereby required to attend and assist in such examination; or in case of the non-attendance of the pilot or pilots who shall be so notified to attend for that purpose, then, without the presence or assistance of any licensed pilot, to examine, or cause to be examined, such applicant, touching his qualifications for the office of a pilot, and in particular, touching his knowledge of the sailing and management of a square rigged vessel, and also touching his knowledge of the tides, soundings, bearing and distances of the several shoals, rocks, bars and points of land, and night lights in the navigation for which he applies for a license to act as a pilot, and touching any other matter relating thereto, which the said commissioners may think proper. And if, upon examination, the person so applying shall be found to be of good moral character and temperate habits, and to be possessed of sufficient ability, skill and experience to act as a pilot, and not otherwise, the said commissioners may grant him a license for piloting vessels to and from the port of New York, by the way of Sandy Hook.

§ 11. The commissioners, before granting licenses, shall require all pilots to enter into recognizance to the people of this state, with two sureties, to be approved by such commissioners, or a majority of them, each in a penalty not exceeding five hundred dollars, condition that the pilot shall diligently and faithfully perform his duties as pilot, and observe the rules and regulations and decisions of the board; and every such recognizance shall be prosecuted in the name of the people of the State of New York, by or in behalf of the commissioners, provided a majority of them shall so instruct, and if any amount be collected in such suit, it shall be paid to the said commissioners, and they may direct the same to be applied for purposes as expressed in section twenty-three.

Recogni-
zance to be
given.

§ 12. The said commissioners shall have the power to regulate the stationing of pilot boats for the purpose of receiving pilots from outward bound vessels, and may alter or amend any existing regulations for pilots, and make and duly promulgate and enforce new rules or regulations, not inconsistent with the laws of this state or of the United States, which shall be binding and effectual upon all pilots licensed by them, and upon all parties employing such pilots. They may declare and enforce forfeitures of pilotage upon any mismanagement or neglect of duty by the pilots licensed by them; they may declare and impose and collect fines and penalties, not exceeding two hundred and fifty dollars for each offence, to prevent any of the pilots licensed by them from combining injuriously with each other or with other persons, and to prevent any person licensed by them from acting as a pilot during his suspension or after his license may be revoked; and the said commissioners may establish and enforce all other needful

Regulation
of pilot
boats and
pilotage.

PART I.

rules and regulations for the conduct and government of the pilots licensed by them, and the parties employing them, and they may enforce and receive accounts of all moneys collected for pilotage by the pilots licensed by them, and may impose and collect from such pilots a sum not exceeding three per cent on the amount thereof, to defray their necessary expenses, including clerk hire and office rent.

As amended by Laws of 1854, ch. 196.

Fees on in-
ward bound
vessels.

§ 13. The fees for piloting are hereby established as follows:

For every merchant vessel, inward bound, and not exempted from pilotage by virtue of these regulations, drawing less than fourteen feet of water, two dollars and forty-four cents per foot.

For every vessel drawing fourteen feet, and less than eighteen feet of water, three dollars and six and one-quarter cents per foot.

For every vessel drawing eighteen feet, and under twenty-one feet of water, three dollars and sixty-nine cents per foot.

For every vessel drawing twenty-one feet of water, and upward, four dollars and thirty-one and a quarter cents per foot.

If the masters or owners of any vessel shall request the pilot to moor said vessel at any place within Sandy Hook, and not to be taken to the wharf or harbor of New York, or the vessel to be detained at quarantine, the same pilotage shall be allowed, and the pilot entitled to his discharge.

For piloting national armed vessels of the United States, and also those of foreign nations, five dollars per foot.

When any ship or vessel, bound to the port of New York, and boarded by any pilot appointed by this board, at such distance to the southward or eastward of Sandy Hook light-house as that said light-house could not be seen from the deck of such ship or vessel in the day time, and in fair weather, the addition of one-fourth to the rates of pilotage hereinbefore mentioned shall be allowed to such pilot.

Fees on
outward
bound ves-
sels.

§ 14. The pilotage on merchant vessels outward, shall be as follows:

For every vessel drawing less than fourteen feet of water, one dollar and eighty-one cents per foot.

For every vessel drawing fourteen feet, and less than eighteen feet of water, two dollars and twelve and a half cents per foot.

For every vessel drawing eighteen feet, and less than twenty one feet of water, two dollars and seventy-five cents per foot.

For every vessel drawing twenty-one feet of water, and upwards, three dollars and eighteen and three-fourth cents per foot.

As amended by Laws of 1854, ch. 196.

§ 15. The rates of pilotage for any intermediate distance shall be determined by the board of commissioners, and promulgated in their rules and regulations for the government of pilots.

CHAP. XX.
Rates of
pilotage.

§ 16. Between the first day of November and the first day of April, inclusive, four dollars shall be added to the full pilotage of every vessel coming into, or going out of the port of New York.

Addition to
full pilot-
age.

[For Sec. 17 see Laws of 1857, ch. 243.]

§ 18. The pilotage shall be payable by the master, owner, consignee, or agent entering or clearing the vessel at the port of New York, who shall be jointly and severally liable therefor.

Pilotage,
how paya-
ble

§ 19. A pilot, who is carried to sea when a boat is attending to receive him, shall receive at the rate of one hundred dollars per month during his necessary absence.

Pay of pi-
lots, when
carried to
sea.

§ 20. Masters of vessels shall give an account to the pilot when boarding, of the draught of such vessels; and in case the draught given is less than the actual draught, he shall forfeit the sum of twenty-five dollars, which may be sued for and recovered by the commissioners, as is hereinafter provided in section twenty-eight, in respect to other fines and penalties.

Masters of
vessels to
account to
pilots.

[For Sec. 21 see Laws of 1857, ch. 243.]

§ 22. It shall be the duty of the commissioners, out of any funds which may be obtained, to provide rewards, to encourage the prompt relief of disabled vessels, and the speedy report of the same, and generally to encourage not only the energetic performance of duty, but benevolent and praiseworthy efforts to relieve vessels and passengers from distress or suffering.

Rewards.

§ 23. The commissioners shall have power and authority, at any time, to suspend any pilots so licensed, for any period they may think proper, and also to revoke and annul any license which shall have been granted, upon satisfactory proof of negligence or carelessness on the part of such pilot, or of wilful dereliction of duty, or of wilful disobedience of any lawful rule or regulation duly made and promulgated by said commissioner; but the pilot or pilots so suspended may at any time upon due notice appeal to the commissioners for a rehearing of their case and the commissioners shall have power to confirm or reverse the previous act or decision of the said board.

Pilots may
be suspend-
ed.

As amended by Laws of 1854, ch. 196.

§ 24. It shall be the duty of the commissioners to hear and examine all complaints duly made in writing against any pilot licensed by them, or against any person connected with a boat of such pilot, for any misbehavior or neglect of duty, or breach of their rules or regulations, that shall appear to them material, to be investigated; and also all complaints made in like manner by any licensed pilot against any mas-

Commis-
sioners to
hear and
examine
complaints.

PART I.

ter, owner or seaman of a vessel, for any misbehavior towards such pilot in the performance of his duty or any breach of such rules or regulations.

Before complaint or suspension, persons must be notified.

§ 25. Before any person shall be proceeded against on any complaint, and before any pilot be suspended longer than for one month, or be removed, such person or pilot shall be notified, in writing, signed by the secretary, to appear before the commissioners, specifying the nature and substance of such complaint, which notice shall be served, personally, at least five days before the time fixed for appearance, and the commissioners, for just cause, shall postpone or adjourn the hearing, from time to time; a certificate of such commissioners, or of a majority of them, with proof of such service of notice, shall be prima facie, but not conclusive evidence that the party upon whom the notice was served, and a fine or penalty thereupon imposed, is liable to pay such fine or penalty.

Subpenas.

§ 26. The secretary, under the supervision of the commissioners, shall, at the instance either of the complaining or defending party, issue subpoenas for compelling the attendance of witnesses to testify before the commissioners, in all cases in which the power to hear and examine is conferred by this act; and it shall be the duty of the commissioners to examine all such witnesses on oath, to be administered by them, as shall appear to them to give material testimony; and each person subpoenaed as a witness shall be entitled to the like compensation from the party requiring his attendance, and be subject to the like penalties and punishments for disobedience, or for false swearing, as in civil suit at law in a court of record.

Fines or penalties, how to be sued for.

§ 27. All pecuniary fines or penalties, imposed by the said commissioners by virtue of this act, may be sued for in the name of the "Board of Commissioners of Pilots," and the notice and certificate, given as aforesaid, may be set forth in pleading, without setting forth other facts or circumstances. The decision of a majority of the commissioners shall be conclusive upon all questions arising under this act, except as hereinbefore provided. In case of an omission to fill any vacancy in the board of commissioners for one month, the remaining two or three commissioners (as the case may be) shall have authority to perform all the duties of the commissioners for the time being.

Secretary and clerks.

§ 28. It shall be the duty of the secretary and his clerks, if any, when not employed under the foregoing provisions of this act, to aid the licensed pilots in keeping their accounts of pilotage, and in collecting the same, if desired, and in keeping a register of calls for pilots.

[For Sec. 29 see Laws of 1857, ch. 243.]

Act concerning Hell Gate pilots not

§ 30. This act shall not repeal or in any way affect the provisions of the act entitled "An act concerning the pilots of

the channel of the East river, commonly called Hell Gate," passed April 15, 1847.

§ 31. All laws now in force, and which are inconsistent with the provisions of this act, are hereby repealed.

CHAP. XX.
to be affect-
ed by this
act.
Repeal.

CHAP. 243.

AN ACT to amend the Pilot Laws, passed June twenty-eighth, eighteen hundred and fifty-three.

PASSED April 8, 1857.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. Sections seventeen, twenty-one and twenty-nine, of the Pilot laws, passed June twenty-eighth, eighteen hundred and fifty-three, are hereby amended so as to read as follows:

§ 17. For every day of detention in the harbor of an outward bound vessel, after the services of a pilot have been required and given, except detention shall be caused by such adverse winds and weather that the vessel cannot get to sea; and for every day of detention of an inward bound vessel, by ice, longer than two days for passage from sea to wharf, three dollars shall be added to the pilotage. If any pilot shall be detained at quarantine, or elsewhere, by the health officer, for being or having been on board a sickly vessel as pilot, the master, owner or agent, or consignee of such vessel, shall pay to such pilot all necessary expenses of living, and three dollars per day for each and every day of such detention.

Fees of
pilots.

§ 21. For services rendered by pilots in moving or transporting vessels in the harbor of New York, the following shall be the fees: For moving from North to East river, or vice versa, if a seventy-four gun ship, twenty dollars, if a sloop of war, ten dollars, if a merchant vessel, five dollars, except such vessel shall have arrived from sea, or is ready for and bound to sea on the day such services for transportation are rendered; but if the services are rendered thereafter, such payment shall be made. For moving any vessel from the quarantine to the city of New-York, one-quarter of the sum that would be due for the inward pilotage of such vessel. For hauling any vessel from the river to a wharf, or from a wharf into the river, three dollars, except on the day of arrival or departure of such vessel.

For trans-
porting
vessels in
harbor.

Moving
from
quaran-
tine.

§ 29. No master of a vessel under three hundred tons burthen, belonging to a citizen of the United States, and licensed and employed in the coasting trade, by the way of Sandy Hook, shall be required to employ a licensed pilot; but in case the services of a pilot shall have been given, the pilot shall be entitled to the rates established by the act of June twenty-eighth, eighteen hundred and fifty-three. If the mas-

Masters of
vessels.

PART I.
Masters
may obtain
license.

Fees for
license.

In case of
refusal.

Persons not
holding a
license.

Penalty.

Steam ves-
sels.

ter of any vessel above one hundred and fifty and not exceeding three hundred tons burthen, and owned by a citizen of the United States, and sailing under a coasting license to or from the port of New York, by the way of Sandy Hook, shall be desirous of piloting his own vessel, he shall first obtain a license for such purpose from the commissioners of pilots, who are hereby authorised and required to grant the same, if such master shall, after an examination had by said commissioners, be deemed competent; which said license shall be and continue in force one year from the date thereof, or until the determination of any voyage during which the license may expire. For such license, the master, to whom it shall be granted, shall pay to the said commissioners four cents per ton. All masters of foreign vessels and vessels from a foreign port, and all vessels sailing under register, bound to or from the port of New York by the way of Sandy Hook, shall take a licensed pilot; or in case of refusal to take such pilot, shall himself, owners or consignees, pay the said pilotage as if one had been employed; and such pilotage shall be paid to the pilot first speaking or offering his services as pilot to such vessel.

Any person not holding a license as pilot under this act, or under the laws of the state of New Jersey, who shall pilot, or offer to pilot any ship or vessel to or from the port of New York, by the way of Sandy Hook, except such as are exempt by virtue of this act; or any master or person on board a steam tug or tow boat, who shall tow such vessel or vessels, without such licensed pilot on board such vessel or vessels, shall be deemed guilty of a misdemeanor, and, on conviction, shall be punished by a fine not exceeding one hundred dollars, or imprisonment not exceeding sixty days; and all persons employing a person to act as pilot, not holding a license under this act, or under the laws of the state of New Jersey, shall forfeit and pay to the board of commissioners of pilots the sum of one hundred dollars.

§ 2. The provisions of this act shall not apply to vessels propelled wholly or in part by steam, owned or belonging to citizens of the United States, and licensed and engaged in the coasting trade.

CHAP. 367.

AN ACT to regulate the use of slips and wharves of the city of New-York, between piers number two and number ten, East river.

PASSED April 13, 1857.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Wharves
for canal
boats.

§ 1. All that part of the water adjacent to the wharves of the city of New York, from the east side of pier number two

to and including the east side of pier number nine, East river, shall hereafter, from the twentieth day of March to the twentieth day of December, in each and every year, be set apart, kept and reserved, to the extent specified in this act, for the use and accommodation of canal boats and barges, engaged in the business of transporting property on the Hudson river, or coming to tide water from the canals of this state, arriving in said city from the city of Albany or any port or place north or west thereof, and barges transporting property to and from the termini of the New York and Erie, New York Central and Hudson River railroads; and that piers number ten, eleven and the west side of pier number twelve, East river, inclusive, shall hereafter be set apart, kept and reserved for the use and accommodation of the regular packet lines of sailing vessels, propellers and barges now occupying berths on piers nine, ten, eleven and west side of pier twelve, and running to and from the following ports, to wit: Boston, Massachusetts; Portsmouth, New Hampshire; Philadelphia, via the Delaware and Raritan canal; Wilmington, North Carolina; Savannah, Georgia; Charleston, South Carolina; Apalachicola, Florida; Mobile, Alabama; New Orleans, Louisiana; and Matagorda, Texas. Packets.

§ 2. It shall be the duty of the harbor masters or other officer or officers of said city who are now or hereafter shall be empowered by law or by any ordinance of said city, to regulate and station ships and vessels in the harbor of said city, and they shall have power to prohibit and prevent all other boats, ships and vessels from entering any of the slips or approaching or lying at any of the wharves between the piers named in the preceding section during the period therein specified, when such slips and wharves shall be required for the use and accommodation of the vessels, boats and barges mentioned in said section. In case any boat, ship or vessel, not entitled according to the provisions of this act to use said waters, shall have entered any of said slips or shall be lying at any of said wharves during the period aforesaid, when such slip or wharf shall be needed or required for the use or accommodation of any of the vessels, boats or barges specified in the preceding section, it shall be the duty of the said harbor masters or other officer or officers, and they shall have power forthwith to remove such boat, ship or vessel from such slip or wharf, so far as may be necessary to accommodate the vessels, boats and barges entitled as aforesaid to the use of said slip or wharf. Duty of harbor masters.

§ 3. Any person resisting or refusing or neglecting to comply with any order or direction of any harbor master or other officer, given in pursuance of this act, in relation to any boat, ship or vessel under the command or control of such person, and any person whatever who shall resist or oppose any harbor master or other officer in the performance of the duties of his office, under this act, shall, for every such offence, forfeit Penalties.

PART I.

and pay the sum of fifty dollars, to be recovered, collected, and applied in the manner provided for the recovery and application of the penalties imposed and specified in the third section of the act entitled "An act relating to the harbor masters of the port of New York," passed March sixteen, eighteen hundred and fifty.

Rights of
owners.

§ 4. Nothing herein contained shall be construed to take away or in any respect impair the right of the owner or lessee of any wharf, slip or pier, mentioned in this act, from demanding, collecting and receiving the usual and legal rates of wharfage for all boats, ships and vessels using or occupying said wharves, slips and piers, nor shall anything herein be construed to prevent the free use of the waters and wharves specified in the preceding section, when such waters and wharves are not required for the use and accommodation of the vessels, boats and barges described in said first section, nor to be construed so as to prevent any vessel from hauling alongside of any vessel, barge or canal boat, to land cargo or to receive cargo, or from laying alongside of such vessel, boat or barge a sufficient length of time to transfer cargo with all reasonable dispatch, nor shall anything herein contained be so construed as to disturb or interfere with any existing rights of occupancy granted by ordinance or resolution of the mayor and common council of the city of New York in favor of any of the lines of river barges or canal boats aforesaid.

CHAP. 405.

AN ACT to reorganise the Warden's office of the Port of New York.

PASSED April 14, 1857.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Board of
Wardens.

§ 1. There shall be and hereby is established a board of wardens for the port of New York, which shall be called and known by the name and title of "The Port Wardens of the Port of New York," and shall be composed of nine members, one of whom shall be a resident of the city of Brooklyn, three of whom shall be nautical men who shall be nominated, and by and with the advice and consent of the senate appointed by the governor; and they shall annually elect one of their number president and another vice-president, and the said board of wardens first appointed under this act shall be divided into three classes of three wardens each; the term of office of the first class shall expire at the end of one year; the second class at the end of two years, and the third class at the end of three years; all subsequent appointments shall be for the term of three years, except that any vacancy shall be filled for the residue of the unexpired term; said wardens shall

hold their offices until their successors shall be appointed and duly qualified. Any warden may be removed for misconduct or neglect of duty, at the discretion of the governor, and any warden neglecting or refusing to perform the duties of his office, or violating the regulations of the board, after due notice from the board shall be liable to suspension by the vote of a majority of the whole board, and during such suspension said warden shall not be entitled to participate in the pay and emoluments of said office unless reinstated by the governor, by and before whom an appeal shall be heard and decided.

17 N. Y., 141.

§ 2. The said board shall have power to appoint a secretary and fix his compensation, who shall hold his office during the pleasure of the board, said compensation to be paid out of the receipts of the office. It shall be the duty of the secretary to keep in such books as shall be provided for the purpose, a full, true and complete record of all their acts, proceedings, surveys and reports, and such books shall be open to the public inspection of any person interested therein; and the said board of wardens shall have and use a common seal, and each warden shall have full power and authority to administer oaths, examine witnesses and take affidavits concerning the business of said office, and all wilful false swearing under such oaths shall be deemed perjury and punished accordingly; and the said board shall also have full power to make such rules and regulations for their own government and the discharge of their duties under this act as they may deem necessary and proper. They shall keep an office in the city of New York, at which office a majority of them and their secretary shall give attendance daily, (Sundays and public holidays excepted,) and shall have the exclusive right to perform all the duties of port wardens of the port of New York specified in this act.

Secretary.

17 N. Y., 144.

§ 3. It shall be the duty of said board or some one of them, on being notified and requested by any of the parties in interest to proceed in person on board of any vessel for the purpose of examining the condition and stowage of cargo, and if there be any goods damaged on board said vessel, they shall enquire, examine and ascertain the cause or causes of such damage and make a memorandum thereof, and enter the same in full upon the books of the office, and if after the arrival in port of any vessel, the hatches shall be first opened by any person not a port warden, and the cargo or any part thereof shall come from on ship board in a damaged condition, these facts shall be presumptive evidence that such damage occurred in consequence of improper stowage or negligence on the part of the persons in charge of the vessel, and such default shall be chargeable to the owner, consignee, master

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wardens.

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or other person in interest (as part owner or master) of said vessel, each and all of whom shall be primarily liable for such damage. And the said board shall be exclusive surveyors of any vessel which may have suffered wreck or damage, or which shall be deemed unfit to proceed to sea, and shall examine the condition of the hull, spars, sails, rigging and all appurtenances thereof, and they shall call to their assistance one or more carpenters, sail makers, riggers, shipwrights or other person skilled in his profession, to aid them in their examination and survey, provided such person shall not be interested therein, and all parties so called shall be sworn and shall each be allowed a fee of two dollars, to be paid by the persons requiring said examination. The said wardens shall specify what damage has occurred and record in the books of said office a full and particular account of all surveys held on said vessel; they shall also be the judges of the repairs necessary to render said vessel again seaworthy, or for the safety of said vessel and cargo on the intended voyage. They shall also have exclusive cognizance of all matters relating to the surveys of vessels and their cargoes arriving at the port of New York in distress, or damaged in said port of New York, and shall be the judges of its fitness to be reshipped to its port of destination, or whether it shall be sold for the benefit of whom it may concern; they shall also, if called upon so to do, estimate the value or measurement of any vessel when the same is in dispute or libeled, and record the same in the books of said office.

17 N. Y., 144.

Duty of wardens.

§ 4. It shall be the duty of said board, or some one of them, on being notified and requested so to do, by any of the parties in interest, to proceed in person to any warehouse, store or dwelling, or in the public streets, or on the wharf, and examine any merchandise, vessels' materials or other property said to have been damaged on board of any vessel, and inquire, examine and ascertain the cause or causes of such damage, and make a memorandum thereof of such property, and record in the books of said office a full and complete statement thereof; and it shall be the duty of the said board, when so requested, to furnish a certificate of any record in the books of said office, to any party interested therein, upon their paying to the said board the regular fee for said certificate; all certificates issued shall be under the seal of said office, and signed by the president or vice-president and secretary, and said certificate shall be evidence of the existence and contents of such record, in any court of this state, in all cases of inquiries, examinations and surveys, relating to vessels and cargoes on board thereof, as specified in this act; the said board shall give notice to all persons interested in or having charge of the subject matter of such inquiry, examination or survey, by advertisement in at least two daily newspapers printed and published in the city of New York, of the pen-

dency of such inquiry, examination or survey, and of the time and place of completing the same, the expense whereof shall be added to and paid with the fee for making such inquiry, examination or survey.

§ 5. It shall be the duty of said board or some one of the members thereof, to attend personally all sales of vessels, when condemned, vessels' materials, and goods in a damaged state, which shall be sold at public auction in the port of New York, by reason of such damage, for the benefit of owners or underwriters, or for account of whom it may concern; and it shall be the duty of auctioneers making such sales, to give due notice thereof to said board before the sale; and all such sales shall be made by auctioneers, under the direction and by order of the wardens, for which service they shall be entitled to receive a commission of one-half of one per cent on the gross amount of sales thereof, to be paid to said board of wardens on demand, by the auctioneer making such sale; and such property shall be exempt from the payment of auction duties to the state, and it shall be the duty of auctioneers to make monthly statements to said board, specifying the total amount of each day's sale made by them under this act, which statement shall be filed in said wardens' office, and the wardens, when required by the owner or consignee thereof, shall certify the cause of such damage, the amount of such sale and the charges on the same, all of which shall be recorded in the books of said office; and the said board of wardens shall be allowed for each and every survey held on board of any vessel, on hatches, stowage of cargo, or damaged goods, or at any warehouse, store or dwelling, or in the public street, or on the wharf, within the limits of the port of New York, on goods said to be damaged, the sum of two dollars, and for each and every certificate given in consequence thereof, the sum of one dollar, and for each and every survey on the hull, spars, sails or rigging of any vessel damaged or arriving at said port in distress, the sum of five dollars; and for each and every certificate given in consequence thereof, the sum of two dollars and fifty cents; and for each valuation or measurement of any vessel the sum of ten dollars, and the compensation and emoluments of said office shall be divided equally between the said nine wardens composing the board under this act.

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wardens.

§ 6. It shall be unlawful for any person or persons, except the port wardens duly appointed under this act, to assume to act as port wardens, or to undertake the performance of any of the duties prescribed in this act, or pertaining to the said office of port warden; and it shall be unlawful for any person or persons to employ any other than the legally appointed wardens for the performance of such duties; and it shall also be unlawful for any person or persons to issue certificates of surveys on vessels, vessels' materials, or goods damaged, with the intent to defeat or avoid the provisions of this act; and

No one
but a war-
den to act.

PART I.
Penalty for
violation.

any person or persons violating the provisions of this act, shall be deemed guilty of a misdemeanor and shall forfeit and pay to the wardens a penalty of one hundred dollars for each offence committed, and the said board of wardens or their successors in office may, in their proper name and title, sue for and recover in any court in this state, having cognizance thereof, their legal fees, or the penalty of this act for any violation of the laws appertaining to the duties of the port wardens of the port of New York.

Special
wardens.

§ 7. The governor shall nominate, and by and with the consent of the senate, appoint two special wardens, who shall reside at quarantine and whose duty it shall be to act as wardens only in regard to vessels and goods that are actually under and subject to quarantine detention, and their duties shall not apply to vessels stopping at quarantine for the purpose only of visitation by a health officer and not detained. One of the said wardens shall be appointed for the term of two years and the other and all subsequent appointments for the term of three years. Such special wardens shall make returns in detail, of all surveys made by them, and of all other duties by them performed, to the wardens' office in the city of New York, within forty-eight hours after such survey is made or such service performed; and all rules and regulations adopted by the board of wardens, shall apply to and govern said special wardens in discharge of their duties at quarantine. The special wardens at quarantine shall be allowed and entitled to receive for each and every survey or examination made by them, the sum of five dollars, and the compensation and emoluments of said office shall be divided equally between the said special wardens, share and share alike.

Receipts
and expen
ses.

§ 8. The said board of port wardens shall keep a full and accurate account of all their receipts and expenditures, and transmit to the comptroller a true copy thereof annually on the first Monday of January in each year, and which copy shall be verified by the oaths of the president and secretary of said board, and each warden shall append to such account an affidavit that he has not taken or received any money or goods as presents, directly or indirectly, for services as warden, except the legal fees.

Repeal.

§ 9. Sections one, two, three, four, five and six, of chapter eighteen of the laws of eighteen hundred and nineteen, and sections one, two, three and four, of chapter ninety-three, of the laws of eighteen hundred and thirty-one, and chapter eighty-nine of the laws of eighteen hundred and forty-four, and section nine of chapter sixty-two of the laws of eighteen hundred and forty-six, and all acts and parts of acts inconsistent with the provisions of this act are hereby repealed.

CHAP. 487.

AN ACT defining and regulating the powers, duties and compensation of the captain of the port and harbor masters of the port of New York.

PASSED May 22, 1862; three-fifths being present.

The People of the State of New York. represented in Senate and Assembly, do enact as follows:

§ 1. The Governor shall appoint by and with the consent of the Senate, an officer to be called captain of the port of New York, and to assist him, subordinate to his directions, eleven harbor masters. All of said harbor masters shall reside, after their appointment and during their term of office in the city of New York or in the city of Brooklyn. Said captain of the port or any of the harbor masters shall not be directly or indirectly interested as owners or agents in any steam tow boat, tug boat, ship, vessel, canal boat, barge or lighter, navigating the port of New York. Said harbor masters shall hold their office two years, and said captain of the port shall hold his office three years, and until others are appointed, unless sooner removed for cause. Before entering on his duties, said captain of the port shall execute a bond to the people of this state in the penal sum of ten thousand dollars, with at least two sufficient sureties, to be approved by a justice of the supreme court, conditioned for the faithful performance of the duties of his office, and the proper application of all fees and moneys that may come into his hands as such officer; and each of said harbor masters shall execute a like bond in the penal sum of two thousand five hundred dollars, conditioned for the faithful performance of the duties of his office; said bonds shall be filed in the office of the clerk of the county of New York.

Captain of port and harbor masters to be appointed.

Term of office.

Bond.

1 E. D. S., 588.

§ 2. It shall be the duty of, and the captain of the port shall have power to divide the port of New York into eleven districts, specifying the limits and boundaries thereof, and he may, whenever the exigencies of business demand, re-district the said port, or alter any such districts. To each of such districts he shall have power to assign a harbor master to perform the duties thereof, (and may change such harbor master from one district to another,) or put two or more districts under the care of one harbor master, as the exigencies of business may require.

Port to be divided into 11 districts.

§ 3. The said captain of the port shall set apart, keep, and reserve all that part of the water adjacent to the wharves of the city of New York, from the east side of pier number two to and including the east side of pier number nine East river,

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Regulations
as to the
port.

from the twentieth day of March to the first day of January in each year, for the exclusive use and accommodation of canal boats and barges, engaged in the business of transporting property on the Hudson river or coming to tide water from the canals of the state, or arriving in said port from Albany or any place north or west thereof, and he shall assign such other accommodations for said canal boats and barges in other parts of the port of New York as may from time to time be necessary in receiving or discharging their cargoes.

§ 4. No vessel, other than canal boats, barges, or lighters receiving or delivering property from or to said canal boats or barges, shall use or enter into for the purpose of using any part of the port of New York set apart for the use of canal boats and barges, without the written consent of the captain of the port first had and obtained therefor, and then only between the first day of January and twentieth day of March in each year, and when not occupied by canal boats, under a penalty of one hundred dollars for every day that such vessel shall remain in said part of said port so set apart, after being notified to leave by the captain of the port or a harbor master, and said penalty shall be a lien upon any such vessel, and be enforced by proceedings against, instituted by and in the name of the captain of said port according to the provisions of the laws of this state concerning attachments against vessels.

Captain of
port to re-
ceive fees
for services
of harbor
masters.

§ 5. It shall be the duty of the captain of said port to collect and receive all fees hereafter provided for the services of harbor masters, and on the first Monday of each month to make out an account and duly verify the same on oath, of all moneys which have become due for fees, and have been collected and uncollected, and such account shall be open to the inspection of said harbor masters at all times, and the money received shall be divided equally between each of said harbor masters and himself, share and share alike, after deducting such office and legal expenses as may have been necessarily expended in the discharge of his duties as captain of the port; provided, however, that such office and legal expenses shall not exceed, in any one month, the sum of one hundred and fifty dollars.

Proviso.

Fees.

§ 6. The following fees shall be collected under this act, and no others: All ships or vessels of the United States of more than one hundred and fifty-tons burden, except canal boats, lighters, tugs, barges, sound and river steamboats, employed on regular lines, and all ships or vessels of any foreign nation that are permitted by the by-laws of the United States to enter on the same terms as vessels of the United States, which shall enter the said port of New York, or load or unload, or make fast to any wharf therein, shall pay one and one-half of one cent per ton, to be computed from the tonnage expressed in the registers of enrollments of such ships or vessels respectively. All other foreign ships or vessels

which shall arrive at and enter the said port, and load or unload, or make fast to any wharf therein, shall pay three cents per ton, to be computed on the tonnage expressed in the registers or the documents on board, except that all coastwise sloops and schooners over one hundred and fifty tons shall pay two dollars fee, and no more. And where difficulties arise between vessels of less than one hundred and fifty tons burthen, and the captain of the port or a harbor master is called upon to settle the same, the vessel, canal boat or barge in fault shall pay five dollars. Such fees shall be paid by the masters, owners or consignees of such ships or vessels at the office of the captain of the port, or to persons authorized by him to collect the same, within forty-eight hours after the arrival of such ship or vessel, and in default thereof, if the same shall have been first duly demanded, such master, owner or consignee, on whom such demand shall have been previously made, shall pay double the amount of such fees, to be sued for and recovered in the name of the captain of said port, in any court having cognizance thereof. All fees under this act shall be paid to the captain of the port, or upon his written order, and shall have power to employ the necessary assistance in making collection thereof, at an expense of not more than five per cent upon the amount collected, which expense shall not be considered office expense.

§ 7. Each harbor master shall have power within the district assigned to him, to provide and assign suitable accommodations for all ships and vessels, and regulate them in the stations they are to occupy at the wharves or in the stream, and to remove from time to time such vessels as are not employed in receiving or discharging their cargoes, to make room for such others as require to be more immediately accommodated for the purpose of receiving or discharging their cargoes, and shall have power to determine as to the fact of their being fairly and in good faith employed in receiving or discharging their cargoes, and shall have authority to determine how far and in what instance it is the duty of the master and others having charge of ships and vessels to accommodate each other in their respective situations. And if any master or any person having charge of any vessel, canal boat, barge or lighter, shall refuse or neglect to move his vessel, canal boat, barge or lighter, when ordered to do so by the captain of the port, or by a harbor master, or shall resist or forcibly oppose said officers in the discharge of their duties, such master or person so refusing, neglecting, resisting or opposing shall, for every such offence, forfeit and pay the sum of fifty dollars, to be recovered with costs of suit by and in the name of the captain of the port, before any court having cognizance thereof.

Powers of
harbor
masters.

1 B., ch. 519; 7 Cow., 349; 1 E. D. S., 588.

§ 8. Each of said harbor masters shall remain in and perform the duties of the district or districts assigned to him by

Duties of
harbor
masters.

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the captain of the port, and shall not absent himself from the cities of New York or Brooklyn without the written permission of the captain of the port. He shall not appoint any deputy or assistant, or delegate the powers of his office to any person or persons whatsoever. He shall not collect any fees under this act, unless authorized to do so by the captain of the port; he shall not take or receive directly or indirectly any money or valuable thing or compensation for his services, or on account of the exercise of his powers of office, except as provided by this act. Any harbor master violating any of the provisions of this section shall, upon conviction thereof in any court of record, be punished by a fine of five hundred dollars, and in addition thereto may, in the discretion of the court, be imprisoned in the county jail for a term not exceeding thirty days.

False representations prohibited.

§ 9. Any person who shall falsely represent himself to be a harbor master, or wrongfully perform the duties of harbor master, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be imprisoned in the county jail for a term not exceeding sixty days, and fined, in the discretion of the court, a sum not exceeding twenty-five dollars.

Complaints against harbor masters

§ 10. It shall be the duty of the captain of the port to hear any complaint against any harbor master for improperly attending to or discharging the duties of his office, and his defence thereto. He shall examine into such complaint and defence, and have authority to administer oaths upon such examinations, and if, after such examination, there shall, in his judgment, be sufficient ground therefor, he shall send said complaint, with the evidence in the matter, to the Governor of the state, within ten days from the receipt of such complaint by the captain of the port, and until the decision of the matter by the Governor, he may suspend such harbor master from the exercise of the duties of his office, and during the period of such suspension such harbor master shall not receive or be entitled to any pay, if he be adjudged guilty of the offence charged.

Punishment for violation of this statute.

§ 11. If the captain of the port shall charge, or receive, or bargain to take or receive, directly or indirectly, any fees greater than those allowed by this act, or shall receive or agree to receive any money or valuable thing, or compensation whatever, as a present or gratuity for the exercise of his official judgment or discretion, or shall refuse to divide with the harbor masters the moneys received by him as aforesaid for each and every refusal, he shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined five hundred dollars and imprisoned for the term of one month in the county jail.

§ 12. All fines and penalties collected under this act, shall be for and applied the use of the New York hospital.

Report of fees.

§ 13. The captain of the port shall report to the Governor of the state, under oath, the whole amount of fees received

under this act, each year, to the thirty-first of December, and such report shall be made within ten days from such thirty-first of December.

§ 14. The terms of office of the present captain of the port and harbor masters shall continue during the terms for which they were appointed, unless they shall be removed for cause, according to the provisions of this act, and the present captain of the port and harbor masters shall be governed by and be subject to this act.

Terms of office of present captain of port and harbor masters.

§ 15. It shall be the duty of the captain of the port or a harbor master whenever required by the captain, owner, or consignee of any vessel, or any person having charge of any vessel, to show a copy of this act to such captain, owner, or consignee, and no person shall be fined for a violation of this act until that has been done.

Copy of act to be shown

§ 16. The Governor shall have power to remove the said captain of the port, or any of said harbor masters, from office for any malfeasance of office or wilful neglect of the duties thereof.

Removal of captain of port and harbor masters.

§ 17. All acts heretofore existing relating to the captain of the port, or to harbor masters of the port of New York, are hereby repealed, but nothing contained in this act shall be construed to change, alter or repeal, or in any way interfere with an act passed April fifteenth, eighteen hundred and fifty-eight, entitled "An act to regulate the use of wharves and slips in the city of New York, which shall be leased to certain steamboat lines." Nor shall steamboats, employed in river or sound navigation, or steamboats occupying their own wharves, or wharves and slips leased under said act be liable to the payment of fees under section six or any other section of this act.

Repeal of certain statutes.

CHAP. 203.

AN ACT to restrain the taking of Oysters in the Hudson river.

PASSED April 21, 1831.

The People of the State of New York, represented in Senate and Assembly, do enact as follows :

§ 1. It shall not be lawful for any person, in any way or manner, to take oysters in the Hudson river, north of the county of New York, in the months of May, June, July, or August, in any year.

Prohibition

1 W., 237; 6 Cow., 339; 20 J. R., 90; 17 J. R., 195.

§ 2. Every person who shall offend against the provisions of the first section of this act, shall incur a penalty of twenty-five dollars for each offence, which may be sued for and recovered in an action of debt in any court having cognizance thereof, in the name of any person who will sue for the same.

Penalty.

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Fines how
disposed of.

§ 3. One half of the sum which may be recovered under the preceding section of this act, shall be paid to the superintendents of the poor of the county in which the offence is committed, for the use of the poor, the other half shall be for the use of the person who may sue for and recover the same.

Further re-
striction.

§ 4. No person shall take any oysters from their beds, in the Hudson river, within the limits aforesaid, for the purpose of conveying them to another state to have them re-planted, under a penalty of two hundred and fifty dollars for each offence, to be sued for and recovered in action of debt, in the name of the superintendents of the poor of the county in which the offence may be committed, for the use of the poor. Any person who may be prosecuted for a violation of this act may be held to bail.

CHAP. 365.

AN ACT for the preservation of Carp in the Hudson river.

PASSED May 14, 1845.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Prohibi-
tion.

§ 1. No person shall hereafter at any time, in the space of five years, spear or take with any net or seine or aid or assist in the spearing or taking by or with any net or seine, any fish known by the name of carp, from the Hudson river, or knowingly sell or offer for sale any such fish so speared or taken.

Penalty.

§ 2. Whoever shall violate any of the provisions of the preceding section, shall, for every offence, forfeit the sum of fifty dollars.

How recov-
ered.

§ 3. All penalties imposed by this act may be sued for and recovered with the costs of such suit before any justice of the peace of the county, by or in the name of any one of the superintendents of the poor of the county in which the person or persons so taking or aiding in the taking of such fish, or exposing them for sale shall reside; and if sued by any person not such superintendent, such person shall give security to such justice to pay all costs, in case he shall fail to recover judgment in such suit, and the penalty or penalties so recovered, when collected shall be paid by such justice, one-half to the superintendent of the poor, for the use of the poor, and the other half to the person by whom such suit shall be brought.

CHAP. 478.

AN ACT to regulate the planting and taking of oysters in the Harlem river.

PASSED July 10, 1851.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. It shall not be lawful for any person to take oysters from the Harlem river, in the county of New York, in any way or manner during the months of June, July or August in any year. Prohibition.

20 J. R., 90; 17 J. R., 195.

§ 2. Every person who shall offend against the provisions of the first section of this act shall incur a penalty of thirty dollars, and in addition the value of the oysters so taken for each offence, and which may be sued for and recovered before any justice of the peace of any of the towns of Westchester county, or any of the justices of the ward courts of the city of New York, or in any court having cognizance of the same, in the name of any person who will sue therefor, one-half of any sum which may be recovered and received under this section shall be paid into the county treasury of the county in which such action may be brought, and the other half shall be for the use of the person who may sue for the same. Penalty.

§ 3. Any owner or lessee of the lands adjoining the waters of the Harlem river, may have the privilege of planting oysters in said waters in front of their said property or lands, where there are none now planted by others than themselves, and after putting up a plain sign in full view of the waters in which such oysters are planted, stating the fact that this is the private oyster-bed of (here name the owner), no person other than such owner or his legal representative shall take up oysters on the ground thus designated by said sign, under a penalty of fifty dollars for each offence, and shall forfeit in addition the sum equal in amount to the value of the oysters; and the penalties and forfeitures thus imposed may be sued for and recovered in like manner as in section two of this act. Private oyster beds.

§ 4. Any constable of either of the counties of Westchester or New York upon summary process, to be issued by any justice of the peace or ward court of said counties, may seize and take possession of all implements, boats or other vessels found in the possession of and used by any person violating the provisions of this act; and such constable shall make return thereof and hold the same in like manner as upon all attachments issued by justices of the peace or ward court justices. Arrest and prosecution of offenders.

§ 5. Persons prosecuted under this act may be arrested and held to bail in the same manner as upon warrants issued by justices of the peace; and whenever a recovery shall be had for any violation of the provisions of this act, execution shall Arrest how made and executions how issued.

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be issued thereon immediately, in the same manner and with the like effect as is provided in section one hundred and forty-three, article nine, title four, chapter two, third part of the Revised Statutes, third edition, and all the provisions of said section shall apply to executions issued pursuant to the provisions of this act.

CHAP. 290.

AN ACT to provide for the preservation of Trout in the inland waters of this state.

PASSED April 7, 1857.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Taking of trout.

§ 1. No person shall at any time take any trout in any of the inland public waters of this state, with any net, seine, wier, basket, spear, grapple, trap, or any other device whatsoever except a hook and line.

Penalty.

§ 2. Whoever shall offend against the provisions of this act, shall, for each offence, forfeit the sum of twenty-five dollars.

How recovered.

§ 3. All penalties imposed by this act, may be sued for and recovered, with the costs of such suit, before any justice of the peace in this state, by or in the name of any person making complaint thereof, or by any one of the superintendents of the poor where such offence shall be committed, and if sued in name of any such superintendent, the penalty when collected, shall be paid, one-half to the complainant and one-half to the superintendent for the use of the poor of the county; if sued in the name of the complainant, he shall give satisfactory security at the time of commencing his action, for the payment of all costs in the event of failing to recover, and judgment therefor when recovered, belong to and payable to said complainant.

Rev. Stat. to apply.

§ 4. The provisions of section one hundred and forty-three of title four, chapter two, part one of the Revised Statutes, shall be applicable to any offence committed against the provisions of this act.

CHAP. 107.

AN ACT for the protection of fish in the upper portion of the Niagara river.

PASSED April 1, 1862; three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Size of nets to be used.

§ 1. It shall be unlawful to use or draw, for the taking of fish, any seine or net, minnow nets excepted, the meshes or

any mesh of which shall be less than one inch and a half square, in that portion of the Niagara river, or its branches or confluents, which are within this state and above the Falls of Niagara. Any person who shall violate, or aid or abet in the violation of this provision, or incite or procure its violation, shall, for each and every offence, forfeit twenty dollars.

§ 2. It shall be unlawful to use or draw any seine or net, minnow nets excepted, for the taking of fish, in the said portion of the Niagara river, or its branches or confluents, at any time after the first day of April and before the first day of November in any year. Any person who shall violate, or aid and abet in the violation of this provision, or incite or procure its violation, shall, for each unlawful use or drawing of any seine or net, forfeit twenty dollars.

No fish to be taken with net between April and November.

§ 3. It shall be unlawful to use a spear, in the taking of fish, in the said portion of the Niagara river, or its branches or confluents, at any time after the first day of May and before the first day of November of any year. Any person who shall violate, or aid or abet in the violation of this provision, or incite or procure its violation, shall, for each and every offence, forfeit twenty dollars.

Not to use a spear between first of May and first of November.

§ 4. Every person who shall knowingly sell or buy any fish caught or taken in violation of this act, shall, for each and every fish so sold or bought, forfeit one dollar.

Fine for buying and selling fish.

§ 5. All fines or penalties imposed under the provisions of this act, may be recovered with the costs of suit in the name of "The People of the State of New York," before any justice of the peace of any county bordering on said river in this state, and such fines when collected shall be paid, one-half to the person making the complaint, and the other half to the superintendent of the poor in the county; and in case of non-payment of such fines on rendition of judgment therefor, the defendant or defendants shall be committed to the county jail for a period not less than twenty days.

Fines how to be recovered.

CHAP. 212.

AN ACT to facilitate the ingress of salmon into Cayuga Lake, and for the protection of the same.

PASSED April 12, 1862; three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. The owner or owners of each and every dam, whether such owner be an individual, several individuals, or the state, made across the Oswego or other rivers leading from the Cayuga lake into Lake Ontario, so as to prevent the usual course of the salmon from going up the said rivers into Cayuga lake, shall, on or before the first day of October next, so alter such dam, by making a slope apron in the channel of said

Alter the dams on or before the 1st day of October next.

PART I

river, at least five feet wide, smoothly planked, descending from the top of the dam on an angle of not more than thirty degrees and extending to the bottom of the river below, with a side plank of at least one foot in width attached to each side of said apron, in such a manner as to confine the water to the channel-way of said apron in its passage over the dam. Each such dam shall be made at least one foot lower at the place where such apron is joined thereto to create a sufficient draught and depth of water on said apron for the free passage of salmon up said river and over said dams to the waters in Cayuga lake.

Penalty for neglect.

§ 2. The owner or owners of every such dam, who shall refuse or neglect to build and keep in repair an apron, according to the provisions contained in the foregoing section, shall forfeit the sum of one hundred dollars and costs of suit, for every month he or they may so neglect or refuse, and any person feeling himself aggrieved may prosecute therefor in his own name, by action of debt, in any court having cognizance thereof. The one-half of said penalty when so recovered, shall be paid to the person prosecuting therefor, and the other half to the commissioners of highways of the town where such recovery shall be had, to be applied in repairing the roads and bridges in such town.

For preservation of fish.

§ 3. It shall not be lawful for any person to spear, or in any manner catch or destroy any salmon or other fish, while passing up said apron or aprons, or within the distance of ten rods thereof, whereby they may be prevented or disturbed from pursuing their usual course up said river. Every person offending against the provisions of this section shall, for every such offence, forfeit the sum of twenty-five dollars and costs of suit, to be recovered in the same manner and applied in the same way as provided in the last preceding section.

§ 4. All acts and parts of acts heretofore passed, in relation to dams or obstructions in the rivers above recited in the first section of this act, conflicting with this act, or regulating the fishery in the same, are hereby repealed.

CHAP. 64.

AN ACT for the preservation of partridges, quails and woodcock, in certain counties therein mentioned.

PASSED March 14, 1833.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Rev. Stat. extended.

§ 1. So much of the sixteenth title of the twentieth chapter of the first part of the Revised Statutes as relates to the preservation of partridges, quails and woodcock in the counties of Suffolk, Queens, Kings and New York, is hereby extended to the counties of Westchester, Dutchess and Richmond.

CHAP. 156.

AN ACT for the preservation of game in the counties of Rockland and Putnam.

PASSED April 15, 1833.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. The provisions contained in part first, chapter twentieth, title sixteenth of the Revised Statutes, for the preservation of game in certain counties, are hereby extended to the counties of Rockland and Putnam.

Rev. Stat.
extended.

CHAP. 228.

AN ACT to amend title sixteen of chapter twenty of the first and sixth part of the Revised Statutes, entitled "Of the preservation of deer and certain game and animals," and the act extending the same, passed March 14, 1833.

PASSED May 1, 1837.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. No person shall kill any quails or partridges in either of the counties of New York, Kings, Queens and Westchester, between the fifth day of January and the twenty-fifth day of October.

Protection
to quails
and
partridges.

§ 2. Whoever shall offend against the provisions of the last preceding section, by killing any partridge or quail, shall forfeit for every quail or partridge so killed, the sum of five dollars.

Penalty for
killing
them.

§ 3. Every person who shall expose to sale any partridges or quail in either of the said counties respectively, or shall purchase or procure, or shall have in his possession, any of the said game, in either of the said counties, during the time when the killing of the game is prohibited by law, shall be deemed guilty of killing the said game, and liable to the penalties established, within the time prohibited.

Penalties
for selling.

§ 4. The penalty for killing woodcock within the time prohibited by law, is increased to five dollars for every woodcock killed; and this penalty is imposed upon every person who shall either kill or purchase, or have in his possession, a woodcock, within the time prohibited.

Woodcock.

§ 5. The penalties imposed and prescribed by this act, shall be sued for and recovered by and in the name of the overseers of the poor of the town where the offence was committed, in an action to be commenced within three months

Penalties
how to be
recovered.

PART I.

Game laws
amended.

after the commission of the offence, and shall be applied for the use of the poor.

§ 6. The several laws for the preservation of game now in force, are amended so as to correspond with the provisions of this act.

CHAP. 287..

AN ACT to provide for the preservation of deer.

PASSED April 7, 1857.

The People of the State of New York, represented in Senate and Assembly, do enact as follows :

Killing
deer.

§ 1. No person shall, within this state, kill any wild deer, at any time during the months of January, February, March, April, May, June or July.

Sale of ven-
ison and
skins.

§ 2. Every person who shall expose to sale any green deer skin or fresh venison, or who shall have the same in his custody at any time during the months specified in the first section, shall be deemed to have violated the provisions of this act.

Penalty.

§ 3. Whoever shall offend against the provisions of this act, shall for each offence forfeit the sum of twenty-five dollars.

How recov-
ered.

§ 4. All penalties imposed by this act may be sued for and recovered, with the costs of such suit, before any justice of the peace in this state, by or in the name of any person making complaint thereof, or by one of the superintendents of the poor of the county where such offence shall be committed, and if sued in the name of any such superintendent the penalty when collected shall be paid, one-half to the complainant and one-half to the superintendent for the use of the poor of the county. If sued in the name of complainant, he shall give satisfactory security at the time of commencing his action, for the payment of all costs in the event of failing to recover, and judgment therefor when recovered, shall belong to and payable to said complainant.

Rev. Stat.
to apply.

§ 5. The provisions of section one hundred and forty-three of title four, chapter two, part third of the Revised Statutes, shall be applicable to any offence committed against the provisions of this act.

CHAP. 474.

AN ACT for the preservation of moose, wild deer, birds and fresh water fish.

PASSED April 23, 1862; three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. No person shall kill, or pursue with intent to kill, any moose or wild deer, save only during the months of August, September, October, November and December, or shall expose for sale, or have in his or her possession, any green deer skin or fresh venison, save only in the months aforesaid, and also in the month of January and the first fifteen days in the month of February; and no person shall kill, or pursue with intent to kill, any deer in the counties of Kings, Queens and Suffolk, for the term of five years from the passage of this act, and thereafter only in the month of November.

Killing moose or deer.

§ 2. No person shall at any time kill any wild fawn during the period when such fawn is in its spotted coat, or expose for sale, or have in his or her possession, any spotted wild fawn skin.

Fawns not to be killed.

§ 3. No person shall hunt or pursue moose or deer with any dog in the counties of Clinton, Franklin, St. Lawrence, Jefferson, Lewis, Herkimer, Hamilton, Essex, Warren, Fulton and Saratoga, save during the month of October; and no person shall in like manner hunt or pursue any moose or deer in any of the other counties of this state, save during the month of November in each year.

Hunting in certain counties.

§ 4. No person shall kill or catch, or discharge any fire-arm at any wild pigeon while in any nesting ground, or break up or in any manner disturb such nesting ground, or the nests of birds therein, or discharge any fire-arm at any distance within one mile of such nesting place.

Against molesting pigeons in nesting ground.

§ 5. Any person violating the foregoing provisions of this act shall be deemed guilty of a misdemeanor, and shall likewise be liable to a penalty of fifty dollars.

Punishment.

§ 6. No person shall at any time, within this state, kill or trap, or expose for sale, or have in his possession, after the same is killed, any eagle, fish hawk, night hawk, whippoorwill, finch, thrush, lark, sparrow, wren, martin, swallow, tanager, oriole, wood-pecker, bobolink, or any other harmless bird or any song bird; or kill, trap, or expose for sale any robin or starling, save during the months of October, November and December; nor destroy or rob the nests of any wild birds whatever, under penalty of five dollars for each bird so killed, trapped or exposed for sale, and for each nest destroyed or robbed. This section shall not apply to any person who shall kill or trap any bird for the purpose of studying its

Against killing, trapping or selling birds.

PART I.

habits or history, or having the same stuffed and set up as a specimen.

Prairie
fowl.

§ 7. No person shall, at any time within ten years from the passage of this act, kill any pinnated grouse, commonly called the prairie fowl, under a penalty of ten dollars for each bird so killed.

Partridge
and quail.

§ 8. No person shall kill, or have in his or her possession, or expose for sale, any woodcock between the first day of January and the fourth day of July in each year; or any ruffed grouse, commonly called partridge, between the first day of January and the first day of September; or any quail, sometimes called, Virginia partridge, between the first day of January and the twentieth day of October, under a penalty of five dollars for each bird so killed, or had in possession or exposed for sale.

Duck.

§ 9. No person shall kill any wood duck, dusky duck, (commonly called black duck,) gray duck, (commonly called summer duck,) or teal duck, between the first day of February and the first day of August in each year, under a penalty of five dollars for each bird so killed. But this section shall not apply to the waters of Long Island sound or the Atlantic ocean.

Against
trapping
quail or
grouse.

§ 10. No person shall at any time, or in any place within this state, with any trap or snare, take any quail or ruffed grouse, under a penalty of five dollars for each quail or grouse so trapped or snared. But on any prosecution under this section, it shall be deemed a defence to prove the said birds to have been taken on land owned by or in possession of the defendant.

Against
putting
lime, &c.,
in stream,
lake, &c.

§ 11. No person shall place in any fresh water stream, lake or pond in which there are fish, any lime or other deleterious substance with intent to injure fish; nor any drug or medicated bait with intent thereby to poison or catch fish; nor place in any pond or lake stocked with or inhabited by trout, pike or pickerel, or sun fish, with intent to destroy such trout. Any person violating the provisions of this section shall be deemed guilty of a misdemeanor, and shall in addition thereto, and in addition to any damage he may have done, be liable to a penalty of one hundred dollars.

Penalty.

Dam upon
certain
rivers to
have a
sluice-way.

§ 12. Every person building or maintaining a dam upon the rivers emptying into Lake Ontario, the river St. Lawrence or Lake Champlain, which dam is higher than two feet, shall likewise build and maintain, during the months of March, April, May, September, October and November, for the purpose of the passage of fish, a sluice-way in the mid-channel, at least one foot in depth at the edge of the dam, and of proper width, and placed at an angle of not more than thirty degrees, and extending entirely to the running water below the dam, which sluice-way shall be protected on each side by an apron, at least one foot in height, to confine the water therein.

CHAP. XX.
Catching
trout regu-
lated.
Penalty.

Defence.

Salmon
trout.

Black bass,
&c.

Against
taking fish
with net,
spear or
trap in cer-
tain
months.

Against
fishing with
spear, net,
&c, in cer-
tain waters.

§ 13. No person shall at any time, with intent so to do, catch any speckled brook trout or speckled river trout, with any device save only with a hook and line; and no person shall catch any such trout, or have any such trout in his or her possession, save only during the months of March, April, May, June, July and August, under a penalty of five dollars for each trout so caught or had in possession. But in any prosecution under this section, it shall be deemed a defence that the trout so taken were taken for the purpose of stocking other waters therewith.

§ 14. No person shall take, or have in possession, any salmon trout between the fifteenth day of November and the first day of February in each year, under a penalty of five dollars for each fish so taken and had in possession.

§ 15. No person shall take, or have in possession, any black bass or muscalonge between the first day of January and the first day of May, under a penalty of five dollars for each fish so taken or had in possession.

§ 16. No person shall take any fish with a net, spear or trap of any description in any of the fresh water lakes, ponds or bays or outlets thereof or streams of this state, or within the jurisdiction of this state, in the waters of Lakes Ontario and Erie, and the St. Lawrence river, during the months of January, February, March, April and May, except in Chaumont bay. Any person violating the provisions of this section shall be deemed guilty of a misdemeanor, and shall, in addition, be liable to a penalty of five dollars for each fish so caught.

§ 17. No person shall at any time fish with spear, or set any net, trap, weir or pot, with intent to catch fish in any of the following named streams and lakes, or the outlets thereof, or in the streams emptying therein, at any distance within five miles from such lakes, to wit: Seneca lake; Na-tan-water or Fish lake, in Oswego county; Hemlock lake, in the counties of Livingston and Ontario; Crooked lake, in the counties of Yates and Stenben; Seneca river; Canandaigua lake; the Canandaigua or Olyde river, and Great Sodus Bay in the county of Wayne; that part of Croton river in Westchester county lying between the Hudson river and the bridge known as Golden's bridge; Skine lake; Fish lake and Mud lake, in the town of Freedom in the county of Cattaraugus; Purcell's pond, in the town of Springwater and county of Livingston; Black lake in the county of St. Lawrence; or in any of the lakes in the counties of Fulton, Hamilton or Saratoga, or in the Sacandaga river. But suckers, cat-fish, eels, white-fish, shad and minnows and frost-fish are exempted from the operation of this and the last two sections, except in Skine or Lime lake in the county of Cattaraugus. Any person violating this section shall be deemed guilty of a misdemeanor, and shall in addition be liable to a penalty of twenty-five dollars for each offence.

PART I.**Against
selling.**

§ 18. No person shall sell, expose for sale or purchase any fish known to have been taken contrary to the three last sections of this act, under a penalty of five dollars for each fish so sold, or exposed for sale or purchased.

**Against
trespassing
on land for
purpose of
fishing.**

§ 19. Any person trespassing on any lands for the purpose of taking fish from any private pond, stream or spring, after public notice on the part of the owner or occupant thereof, or of said lands not to so trespass, shall be deemed guilty of trespass, and in addition to any damages recoverable by law, shall be liable to the owner, lessee or occupant in a penalty of twenty-five dollars for each offence.

**Against
shooting.**

§ 20. Any person who shall at any time enter upon the lawn, garden, orchard or pleasure grounds immediately surrounding a dwelling house, with any fire arm for the purpose of shooting, contrary to the provisions of this act, or shall shoot at any bird or animal thereon, shall be deemed guilty of trespass, and in addition to the damages, shall be liable to a penalty of ten dollars.

**Suits for
penalties
regulated.**

§ 21. All penalties imposed under the provisions of this act, may be recovered with costs of suit, by any person or persons in his or their own names, before any justice of the peace in the county where the offence was committed or where the defendant resides; or when such suit shall be brought in the city of New York before any justice of any of the district courts, or of the marine court of said city; and any district court judge, justice of the peace, police or other magistrate is authorized upon receiving sufficient security for costs on the part of the complainant, and sufficient proof by affidavit of the violation of the provisions of this act by any person being temporarily within his jurisdiction, but not residing therein, or by any person whose name and residence are unknown, to issue his warrant and have such offender committed or held to bail to answer the charge against him. And any district court judge, justice of the peace, police or other magistrate, may upon proof of probable cause to believe in the concealment of any game or fish mentioned in this act, during any of the prohibited periods, issue his search warrant and cause search to be made in any house, market, boat, car or other building, and for that end may cause any apartment, chest, box, locker or crate to be broken open, and the contents examined. Any penalties when collected, shall be paid by the court before which conviction shall be had, one-half to the overseers of the poor for the use of the poor of the town in which conviction is had, and the remainder to the prosecutor. On the non-payment of the penalty, the defendant shall be committed to the common jail of the county, for a period not less than five days, and at the rate of one day for each dollar of the amount of the judgment, where the sum is over five dollars in amount.

**Exemption
from penal-
ties.**

§ 22. Any person proving that the birds, fish, skins or animals found in his or her possession during the prohibited

periods, were killed prior to such periods, or were killed in any place outside the limits of this state, and that the law of such place did not prohibit such killing, shall be exempted from the penalties of this act.

§ 23. In all prosecutions under this act, it shall be competent for common carriers or express companies to show that the inhibited article in his or their possession came into such possession in another state, in which state the law did not prohibit such possession, and such showing shall be deemed a defence to such prosecution.

Defence.

§ 24. Chapter five hundred and fourteen of the Laws of eighteen hundred and fifty-seven; chapter one hundred and sixty-three of the Laws of eighteen hundred and fifty-eight; chapter two hundred and twenty-nine, chapter two hundred and eighty-five, chapter four hundred and sixty-four of the Laws of eighteen hundred and fifty-nine; chapter one hundred and ninety-six, chapter one hundred and ninety-nine, chapter one hundred and forty-six, chapter three hundred and two, chapter fifty-four, chapter one hundred and eighty-six, and chapter three hundred and eighty-four of the Laws of eighteen hundred and sixty; chapter one hundred and seventy-three, chapter two hundred and fourteen of the Laws of eighteen hundred and sixty-one, and all other acts or parts of acts inconsistent with this act are hereby repealed.

Repeal of
certain acts

CHAP. 273.

AN ACT imposing a tax on dogs in the counties of Richmond, Rockland and Westchester.

PASSED April 12, 1832.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. There shall be annually levied and collected in the counties of Richmond, Rockland and Westchester, the following tax on dogs: upon every dog or bitch of six months old or upwards, kept by any one person or family fifty cents, and for every additional dog or bitch kept by the same person or family the same tax as is provided to be levied and collected by part first chapter twenty title seventeen and section one of the Revised Statutes: and the revenue so collected in the counties of Richmond, Rockland and Westchester shall be applied in the same manner as directed by the said title of the Revised Statutes.

CHAP. 117.

AN ACT to amend the several acts relating to the taxes upon dogs.

PASSED April 20, 1835.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Tax in
what coun-
ties.

§ 1. The provisions of the act entitled "An act imposing a tax on dogs in the counties of Richmond, Rockland and Westchester," passed April 25, 1832, are hereby extended to the counties of Columbia, Dutchess, Allegany and Cattaraugus.

How to be
levied.

§ 2. The taxes hereafter to be levied upon dogs, shall be levied and collected at the time and in the manner directed in the Revised Statutes, for the assessment and collection of taxes imposed by the supervisors of the county.

How to be
applied.

§ 3. All moneys collected as taxes upon dogs, shall constitute a fund for satisfying damages done by dogs in killing or injuring sheep, according to the provisions of the Revised Statutes; and if there be any residue, after satisfying such damages, it shall, after the expiration of one year from the time of collection, be applied to the support of the poor of the town where the same shall have been collected, or to such other purpose as the inhabitants of the town shall, at their annual town meeting, direct.

Repeal.

§ 4. The provisions of any law of this state inconsistent with the provisions of this act, are hereby repealed.

CHAP. 244.

AN ACT to provide for taxing dogs and for the collection of such tax and to create a fund to pay for injuries upon sheep occasioned by dogs.

PASSED April 15, 1862; three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

[Sections 1, 2, 3, 4, 5, 6, 7 amend sections 1, 4, 5, 7, 10, 11, 12 of title 17, ch. 20, part 1 Revised Statutes.]

Power of
collectors.

§ 8. The several collectors to whom any warrant for the collection of the tax herein mentioned shall be delivered, shall have all the powers, for the collection thereof, which such collectors now have, and they and their sureties shall be subject to all the liabilities therefor which such collectors and their sureties are now subject to.

When pay-
ment of tax
to be prov-
ed.

§ 9. In any action brought for the killing of any dog, it shall be incumbent on the plaintiff in said action to prove that the tax imposed upon such dog by the provisions of this act has been paid.

§ 10. Section two of said title, chapter and part, and all acts or parts of acts, whether general or local, inconsistent with the act hereby amended or repugnant thereto, are hereby repealed.

CHAP. XX.
Certain acts
repealed.

CHAP. 155.

AN ACT to provide for the punishment of the fraudulent and unauthorized issue and transfer of the stock and bonds of corporations and joint stock companies.

PASSED April 5, 1855.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. Every officer and every agent of any incorporated company or corporation, formed or existing under or by virtue of the laws of any of the United States, who shall within this state, wilfully and designedly sign, or procure to be signed with intent to issue, sell or pledge, or to cause to be issued, sold or pledged, or shall wilfully and designedly issue, sell or pledge, or cause to be issued, sold or pledged, any false or fraudulent certificate, or other evidence of the ownership or transfer of any share or shares of the capital stock of such incorporated company or corporation, or any false or fraudulent bond, or evidence of debt of such incorporated company or corporation, or any certificate or other evidence of the ownership or transfer of any share or shares in such incorporated company or corporation, or any instrument purporting to be a certificate or other evidence of ownership or transfer of such share or shares, or purporting to be such bond or evidence of debt, the signing, issuing, selling or pledging of which shall not be authorized by the charter and by-laws of such incorporated company or incorporation, or some amendment thereof, shall be deemed guilty of a felony, and shall be punished by a fine not exceeding three thousand dollars, and imprisonment in the state prison for a term not less than three nor more than seven years.

False issue
of stock
a felony.

§ 2. Every officer and agent of every incorporated company, joint stock company or corporation, formed or existing under or by virtue of the laws of any of the United States, who shall, within this state knowingly, wilfully and designedly sign, or procure to be signed, with intent to issue, sell or pledge, or cause to be issued, sold or pledged, or who shall knowingly, wilfully and designedly issue, sell or pledge, or cause to be issued, sold or pledged any certificate or other evidence of the ownership or transfer of any share or shares of the capital stock of such incorporated company, joint stock company or corporation, or any bond or evidence of debt of such incorporated company, joint stock company or corpora-

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tion, or any instrument purporting to be a certificate or other evidence of ownership or transfer of such share or shares, or purporting to be such bond or evidence of debt, without being thereunto first authorized and empowered by such incorporated company, joint stock company or corporation, and every such officer and agent who shall reissue, sell, pledge or dispose of or cause to be reissued, sold, pledged or disposed of, any surrendered or canceled certificate or other evidence of the ownership or transfer of any such share or shares, or of any right or interest therein, with the intent of defrauding any such corporation or any person or persons, shall be deemed guilty of a felony, and shall be punished by a fine not exceeding three thousand dollars, and imprisonment in the state prison not less than three nor more than seven years.

CHAP. 134.

AN ACT to legalize the sale of stocks on time.

PASSED April 10, 1858.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Contracts
valid with-
out pay-
ment of
price.

§ 1. No contract, written or verbal, hereafter made, for the purchase, sale, transfer or delivery of any certificate, or other evidence of debt, due by or from the United States, or any separate state, or of any share or interest in the stock of any bank, or of any company incorporated under any law of the United States, or of any individual state, shall be void or voidable for any want of consideration, or because of the non-payment of any consideration, or because the vender, at the time of making such contract, is not the owner or possessor of the certificate or certificates, or other evidence of such debt, share or interest.

Rev. Stat.
repealed.

§ 2. Sections six, seven and eight, of chapter twenty, title nineteen, article two of the Revised Statutes, entitled "Of brokerage, stock-jobbing and pawn brokers," are hereby repealed.

28 B., 27.

CHAP. 243.

AN ACT concerning Bank Notes.

PASSED April 17, 1830.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. Every note, bill, or other evidence of debt, purporting to be a bank note, issued or to be issued by any incorporated banking institution of this state, shall, after the passage of

this act, be deemed and taken to be payable at the banking-house of such incorporated banking institution, any law or usage to the contrary hereof notwithstanding.

18 J. R., 341.

CHAP. 315.

AN ACT to prevent the mutilation of bank bills.

PASSED April 30, 1833.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. Every person who shall mutilate, cut, deface, disfigure, or perforate with holes, or shall unite or cement together, or to any other thing, any bank bill, draft, note, or other evidence of debt, issued by any incorporated bank in this state, or shall cause or procure the same to be done, with intent to render such bank bill, draft, note, or evidence of debt unfit to be re-issued by said bank, shall, upon conviction, forfeit fifty dollars to the corporation who shall be injured thereby.

CHAP. 262.

AN ACT relative to unclaimed bank dividends and deposits.

PASSED May 9, 1835.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. Each of the banks in this state, on or before the first day of September next, and annually thereafter, shall cause to be published for six successive weeks in one public newspaper printed in the county in which such bank may be located, and in the state paper, a true and accurate statement, verified by the oath of the cashier or presiding officer, of all the deposits made in said bank, and of all the dividends declared upon its stock, which at the date of such statement shall have remained unclaimed by any person authorized to receive them for two years then next preceding.

Banks to
publish
statement.

17 W., 514.

§ 2. Such statement shall set forth the time such deposit was made, its amount, the name and the residence, if known, of the person making it, the name of the person in whose favor the dividend may have been declared, the time it was declared, its amount, and upon what number of shares of the stock of said bank.

How to be
made.

§ 3. Each of the savings banks shall, within the same time above stated, and annually thereafter, cause to be published in the same manner and for the same period of time, a like

By savings
banks.

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statement verified by the oath of the president or other presiding officer, of the names of all persons who have made deposits in such bank, and have not, within two years next preceding the date of said statement, either drawn out any part of the money so deposited, or of the interest accruing upon it.

How to be made.

§ 4. Such statement shall contain the name of the depositor and his residence and occupation, if known, the time the deposit was made and its amount together with the sum due for interest.

Expense.

§ 5. In all cases the expenses of advertising shall be deducted from the sums unclaimed, in proportion to the amount of each respectively.

Report to legislature.

§ 6. It shall be the duty of the presiding officer of each of the said banks, and savings banks, to report the same statement as above required to be published, at each session of the legislature, within ten days after its commencement.

CHAP. 20.

AN ACT to repeal in part the Revised Statutes, relating to unauthorized banking, and the circulation of certain notes or evidence of debt issued by banks.

PASSED February 4, 1837.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Part repealed.

§ 1. So much of title twenty, chapter twenty, part first of the Revised Statutes, relating to unauthorized banking, and the circulation of certain notes or evidences of debt issued by banks, as prohibits a person or association of persons not incorporated, from keeping offices for the purpose of receiving deposits, or discounting notes or bills, is hereby repealed.

15 N. Y., 60; 4 N. Y., 479; 18 B., 458; 8 B., 227.

Restriction as to foreign corporations.

§ 2. This act shall not be so construed as to authorize or permit any corporation created by the laws of any other state or country, to keep any office for the purpose of receiving deposits, or discounting notes or bills, or issuing any evidence of debt to be loaned or put in circulation as money within this state.

As to banks and officers of banks in this state.

§ 3. No incorporated bank in this state, nor any officer or director thereof, shall open or keep an office of deposit or discount under this act, or be interested or concerned, directly or indirectly, in any such association: the bank officer or director shall forfeit the sum of one thousand dollars for each violation of any of the provisions of this section.

[In 1841 the Legislature directed a compilation of the Laws concerning Banking then in force. That compilation is contained in the following pages to and including ch. 202 of the laws of 1840. Acting upon the rule which has governed the editor throughout this work, he has inserted the compilation as he found it in Session Laws of 1841, page 337, and has taken no liberties with legislative action. He has contented himself with an occasional reference to subsequent statutes, affecting those contained in the Legislative compilation.]

The departure in this instance, from the chronological order observed in other parts of this work, is thus accounted for.]

A Chapter containing the act to create a fund for the benefit of the creditors of certain moneyed corporations and for other purposes, passed April 2, 1829, as amended by subsequent enactments showing the provisions of law at present in operation affecting the institutions now doing business under the said acts.

Prepared and published pursuant to section 8 of chap. 292 of the Laws of 1841.

CHAP. 94.

AN ACT to create a fund for the benefit of the creditors of certain moneyed corporation, and for other purposes.

PASSED April 2, 1829.

The People of the State of New York, represented in Senate and Assembly, do enact as follows :

§ 1. Every moneyed corporation having banking powers, hereafter to be created in this state, or whose charter shall be renewed or extended, shall be subject to the provisions of this act. Bank charters subject to this act.

§ 2. For the purpose of creating and continuing the fund herein established, every such corporation shall, on or before the first day of January in every year, pay to the Treasurer of this state, a sum equal to one-half of one per cent on the capital stock of such corporation paid in, after excepting therefrom such part of said capital stock as is held by the state, and at that rate for the time such corporation shall have been in operation, if less than one year. Fund to be created.

§ 3. At the time of making any such payment the corporation making the same, shall cause to be delivered to the Treasurer of this state, a statement, signed by the president and cashier of the corporation, and verified by their oath, duly made before some officer authorized to administer oaths, specifying the actual amount of the capital stock of such corporation paid in, and designating in such statement, the amount of said capital stock, as shall be owned by the state. Statement of stock paid in.

§ 4. The said annual payments shall continue to be made until every such moneyed incorporation shall have paid into the treasury three per cent upon its capital stock, which shall be and remain a perpetual fund, to be denominated the Bank fund.

PART I.

“bank fund,” and to be inviolably appropriated and applied to the payment of such portion of the debts, exclusive of the capital stock, of any of the said corporations which shall become insolvent, as shall remain unpaid, after applying the property and effects of such insolvent corporation, as hereafter provided.

17 N. Y., 502; 21 B., 630.

Comptroller and treasurer to keep accounts.

§ 5. The Comptroller and Treasurer of this state, shall keep proper accounts of the said bank fund, separate and distinct from the funds of this state; and the Comptroller shall from time to time report to the legislature the condition thereof.

21 B., 642.

Fund how to be invested.

§ 6. The said fund shall be the property of the corporations by which the same shall be paid, in proportion to the amount which each of such corporations shall have contributed thereto; but the Comptroller shall have power, and it shall be his duty, from time to time, to invest the same, and all moneys belonging thereto, in the manner provided by law in respect to the common school fund. And whenever it shall become necessary for the purpose of meeting any charges on the said fund, to sell any stocks in which such fund or any part thereof may have been invested, the Comptroller shall have power to make such sale.

21 B., 642.

Income when and how payable.

§ 7. The income arising from said fund, after deducting thereout the salaries of the bank commissioners hereinafter mentioned, shall annually be paid by the Comptroller to the several corporations by which the said fund shall be created, in proportion to the amount which each of the said corporations shall have contributed thereto; but no corporation shall be entitled to any part of the said income, after it shall become insolvent, or shall be dissolved, or its charter shall expire.

21 B., 642.

Payments in cases of reduction of fund.

§ 8. Whenever the fund created by this act shall be reduced by the payment of the debts of an insolvent corporation, to be made as hereinafter provided, below the sum as provided in the fourth section of this act, every moneyed corporation then existing, which shall be subject to this act, and every such corporation thereafter to be created, shall, on or before the first day of January in every year thereafter, pay to the Treasurer of this state, such sum to be designated by the Comptroller, not exceeding a sum equal to one-half of one per cent on its capital stock, as herein before provided; which last mentioned annual payments shall continue to be made by every corporation subject to the operation of this act, until the aforesaid fund shall be reimbursed, and made to amount to the sum as provided in the fourth section; after which, such annual payments shall be suspended, until it shall become necessary again to resort to the said fund, by reason of

the insolvency of any such corporation, as hereinafter provided, when the said payments shall be resumed in manner as aforesaid; and so on, from time to time, as occasion may require.

§ 9. Whenever any corporation subject to the operations of this act, shall become insolvent, and shall be proceeded against as hereinafter provided, it shall be the duty of the court of chancery, immediately after a final dividend of the property and effects of such insolvent corporation shall have been made among the creditors thereof, to cause an order to be entered on its minutes, setting forth,

Duty of court of chancery when a bank becomes insolvent.

1. The total amount of debts against the said corporation, ascertained and established by the said court, including lawful interest thereon :

2. The nett amount of moneys derived from the property and effects of the said corporation, and applied, under the direction of the said court, towards the satisfaction of such debts : and,

3. The total amount of moneys then requisite to pay off and discharge the said debts.

Such order shall also direct the receiver appointed to take charge of the property and effects of the corporation, to apply to, and receive from, the comptroller of this state, in the manner hereinafter provided, the sum which shall be required to pay off and discharge the said debts.

Receiver.

§ 10. Upon such receiver filing with the comptroller of this state, a copy of such order, duly certified by the proper officer, and countersigned by the chancellor, it shall be the duty of the said comptroller to draw his warrant on the treasurer, in favor of such receiver, for such sum, not exceeding the amount of the bank fund, as may have been declared by the said court of chancery to be necessary to satisfy the debts of the said corporation; and the moneys paid to such receiver by such warrant, shall be paid out by him, under the direction of the court of chancery, to the several creditors of the corporation.

Duty of comptroller.

21 B., 642.

§ 11. If at the time of filing with the comptroller, the copy of such order, the bank fund shall be insufficient to satisfy all the debts of the insolvent corporation, a sum sufficient to satisfy the residue of such debts as shall remain unpaid, shall be paid to such receiver, in the manner provided in the last preceding section, out of the first moneys that shall thereafter be paid to the treasurer pursuant to the eighth section of this act; and the moneys so paid to such receiver, shall be paid out by him in the manner required in the last preceding section.

In cases of deficiency of bank fund.

§ 12. The moneys so paid out of the treasury, and all other moneys required by this act to be paid out of the treasury, shall be a charge upon the bank fund hereby created.

Moneys paid how to be charged.

21 B., 642.

PART I.
On expiration of a charter.

§ 13. Whenever the charter of any moneyed corporation, subject to the provisions of this act, shall expire, every such corporation shall be entitled to receive its proportional share of said bank fund, which such corporation may have contributed thereto, after deducting thereout a proportional part of the charges upon the said fund, and which share the comptroller is hereby authorized to pay to said corporation.

Interest.

§ 14. No creditor of any insolvent corporation shall, by virtue of this act, receive interest upon his debt against such corporation, from and after the time such order is made, as is required by the ninth section of this act; nor shall such creditor be entitled to interest anterior to the presentation of his demand against such corporation, to the receiver that shall be appointed to take charge of the property and effects of such corporations.

Bank commissioners and their duty.

§ 15. Three persons, to be styled "The Bank Commissioners of the state of New York," shall be appointed in the manner hereinafter provided; whose duty, or the duty of one of whom it shall be, once at least in every four months, to visit every moneyed corporation upon which the provisions of this act shall be binding; and thoroughly to inspect the affairs of the said moneyed corporations; to examine all the books, papers, notes, bonds and other evidences of debt of said corporations; to compare the funds and property of said corporations with the statements to be made by them as hereinafter provided; to ascertain the quantity of specie the said corporations have on hand; and generally, to make such other inquiries as may be necessary to ascertain the actual condition of the said corporations, and their ability to fulfill all the engagements made by them.

[Sections 15 to 26 of this act are affected by Laws of 1843, ch. 218, which abolishes the office of Bank Commissioners, but confers their powers on persons appointed by the Comptroller.]

How often to visit banks.

§ 16. It shall be the duty of the said commissioners, or some one of them, to visit and inspect the condition and affairs of any moneyed corporation, more frequently than once in every four months, if required so to do, by any three of the moneyed corporations subject to the provisions of this act.

To examine officers.

§ 17. The said commissioners, or either of them, shall have power to examine upon oath, all the officers, servants or agents of said corporations, or any other person, in relation to the affairs and condition of said corporations; which oath the said commissioners, or either of them, are personally authorized to administer.

To apply for an injunction in certain cases.

§ 18. If the said commissioners shall ascertain from such inspection and examination, or in any other manner, that any of said corporations are insolvent, or shall have violated any of the provisions of their act or acts of incorporation, or of any other act binding on such corporations, the said commissioners shall immediately apply to the court of chancery, upon bill or petition, for an injunction against such corporation and

its officers; and the same proceedings shall in all respects be had, and the court shall possess the like powers upon such application, as are provided by law, in respect to such applications, when made by the attorney-general, or by any creditor.

§ 19. It shall be the duty of the said commissioners, in the month of January in each year, to report to the legislature, the manner in which they have discharged the duties imposed upon them; and to accompany such reports by such abstracts from the reports made to them, and by such other statements as they may deem useful.

To report
to the legis-
lature.

[Orig. Sec. 1 repealed by Laws of 1843, ch. 218.]

[Orig. Sec.] 2. The said bank commissioners of the state of New York, are hereby authorized, required and empowered to examine into all violations or abuses of law by any of the incorporated banking institutions of this state; and for that purpose shall have all the powers which are now extended by law and usage to a committee of the senate or assembly of this state, when such committee is authorized to send for persons and papers. Witnesses may be compelled to attend before said commissioners in the same manner as their attendance may be compelled before referees appointed by the supreme court in suits pending therein.

Their
duties and
powers.

[Orig. Sections 20, 21 and 22 in effect repealed by chap. 74, Laws of 1837, entitled "An act to change the manner of appointing Bank Commissioners," passed March 15, 1837, which is substituted for those sections.]

[Orig. Sec. 3 repealed by Laws of 1843, ch. 218.]

§ 23. The said commissioners shall hold their offices for two years, but shall be at any time removable by the Governor for misconduct or neglect of duty.

To hold
office for
two years.

§ 24. Before the said commissioners shall enter upon the execution of the duties of their office, they shall severally take the constitutional oath of office, before the Secretary of State, or some one of the circuit judges, or judges of the county courts of any county; and within ten days thereafter shall cause such oath, certified by the officer before whom it was taken, to be filed in the office of the Secretary of State.

Oath of
office.

§ 25. The said commissioners shall not disclose the names of the debtors of any moneyed corporation examined by them, or any information obtained in the course of such examination, unless required in a court of justice, or in the course of some proceeding authorized by this act.

Not to dis-
close names
of debtors,
&c.

[Sec. 26, repealed by Laws of 1843, ch. 218.]

§ 27. It shall not be lawful for any such moneyed corporation, to issue, or to have outstanding or in circulation, at any time, an amount of notes or bills loaned or put in circulation as money, exceeding twice its capital stock then paid in and actually possessed; nor shall its loans and discounts at any time exceed twice and a half of the amount of its capital stock so paid in and possessed.

Issues of
bank notes.

9 Pai., 12.

§ 28. If any such moneyed corporation shall violate the last preceding section, or shall neglect to make any annual

Corpora-
tion when
to be dis-
solved.

PART I.

payment to the Treasurer of this state, required by this act, for the space of three months, after the time when the same ought to have been made, and after being notified of such delinquency by the Comptroller of this state; or shall have lost one-half of its capital stock paid in; or shall have suspended the payment of its bills in specie, for ninety days; or shall refuse to allow the officers of such corporation to be examined upon oath by the said commissioners, in relation to the affairs and condition of such corporation, every such corporation may be proceeded against by the said commissioners, and dissolved by the chancellor, as an insolvent corporation, as herein before provided.

Penalty for
false state-
ments, &c.

§ 29. Every officer, agent or clerk of a moneyed corporation, who shall make false statements or false entries in the books of such corporation, or shall exhibit false papers with intent to deceive said commissioners as to the condition of such corporation, shall be deemed guilty of felony, and shall be subjected to imprisonment in the state prison, for a term not less than three nor more than ten years.

Liability of
stockhold-
ers.

§ 30. The fourteenth, fifteenth, sixteenth, seventeenth, and eighteenth sections of the second Title of the eighteenth Chapter of the first Part of the Revised Statutes, so far as they provide for the personal liability of the stockholders of any insolvent corporation, shall not apply to any corporation subject to the provisions of this act; but the directors of every corporation subject to this act shall be liable to the stockholders thereof, as provided in the said sections.

Annual
statement.

§ 31. The nineteenth, twentieth, twenty-first, twenty-second, twenty-third and twenty-fourth sections of the second Title of the eighteenth Chapter of the first part of the Revised Statutes, shall be and are hereby so far modified, in respect to the corporations subject to this act, that the statements therein required shall be made to the bank commissioners, instead of the Comptroller; and the powers therein conferred on the Comptroller, shall not extend to any such corporation.

Commis-
sioners not
to be stock-
holders.

§ 32. No stockholder of any moneyed corporation, having banking powers, shall be appointed a commissioner under and by virtue of this act; and it shall not be lawful for the said bank commissioners, or either of them, directly or indirectly, to purchase or in any manner whatever to be concerned in any bank stock in this state.

Rate of
interest.

§ 33. Every moneyed corporation subject to this act, shall be entitled to receive the legal interest established, or which may hereafter be established by the laws of this state on all loans by them made, or notes or bills, by them severally discounted or received in the ordinary course of business; but on all notes or bills by them discounted or received in the ordinary course of business, which shall be mature in sixty-three days from the time of such discount, the said moneyed corporation

shall not take or receive more than at and after the rate of six per cent per annum in advance.

26 B., 597.

§ 34. Every moneyed corporation subject to this act, hereafter to be created, shall, before it makes any loans or discounts, have all its capital actually paid in ; which payment shall be proved on oath, to the satisfaction of the bank commissioners, before any such loans or discounts, shall be made ; and every moneyed corporation whose charter shall be hereafter extended, shall, within one year after such extension takes effect, pay in all its capital, to be proved in like manner, to said bank commissioners ; but every such moneyed corporation whose charter shall be so hereafter extended, shall be permitted to reduce its capital stock to any sum not below the amount actually paid in at the time of the renewal of its charter ; but such corporation shall, within one year from and after the time of such renewal, file with the Comptroller a certificate, under the seal of the corporation, setting forth the sum to which its capital stock is to be reduced, as aforesaid ; the filing of which certificate shall exempt such corporation from the operation of this section, as to so much of its capital stock as shall be reduced in the manner above stated.

Capital stock.

§ 35. No moneyed corporation subject to the provisions of this act, shall issue any bill or note of the said corporation, unless the same shall be made payable on demand and without interest.

Notes.

CHAP. 274.

AN ACT relative to the bank fund.

PASSED April 29, 1833.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. It shall be lawful for the Comptroller, in addition to the power given him by the act entitled "An act to create a fund for the benefit of the creditors of certain moneyed corporations, and for other purposes," passed April 2d, 1829, to invest any moneys in the treasury belonging to such fund, in such stocks or loans as he and the bank commissioners shall deem most for the interest of said fund, and best calculated to advance the purposes of its creation ; but no such loan shall be made to any corporation subject to the provisions of said acts upon the stock, property or credit thereof.

Comptroller to invest moneys.

§ 2. No such loan shall be made upon real estate, unless the same is unencumbered and worth double the value of the sum to be loaned thereon ; nor shall the buildings on said real estate be estimated as a part of the value thereof, unless the same shall be insured by the mortgagor, in such company as

Loans on real estate.

PART I.

the Comptroller and bank commissioners shall designate, from loss or damage by fire during the continuance of such loan, and the policy of such insurance be transferred to the Comptroller as collateral security for the same.

Additional security.

§ 3. If, during the continuance of any loan or investment made in pursuance of this act, the value of the premises mortgaged, or of the stocks purchased, should depreciate, or the security taken for any such loan should, in the opinion of said Comptroller and commissioners, become doubtful, it shall be their duty to require such additional security as he and they shall deem adequate and in case of neglect or refusal to give such additional security, it shall be the duty of the Comptroller forthwith to cause such loans to be collected, or such stocks to be sold at the best price that can be obtained therefor, and the sums received thereon to be again invested or loaned, in the manner provided by this act.

Premiums on stocks.

§ 4. All sums heretofore paid, or which may hereafter be paid out, for premiums on stocks purchased for the purposes of investing the said bank fund, shall be repaid to the capital thereof out of the income to be received thereon, before paying over any part of said income to the corporations entitled to the same; and all sums which may at any time be received into the treasury for premium on stocks sold on account of said fund, shall be considered as income, and be paid over to the corporations entitled to such income, in the manner provided in the seventh section of the act herein before mentioned.

Comptroller may borrow of the fund.

§ 5. Whenever at any time it shall become necessary for the Comptroller to borrow any money for the purpose of defraying the expenses of government, it shall be lawful for him to borrow whatever of said fund may be in the treasury, and issue certificates of stock therefor to the Treasurer in trust for said fund, redeemable at pleasure, and bearing an interest of five per cent.

Sec. 5 amended by chapter 102, Laws of 1837, by substituting five per cent for four and a half.

Powers when to be exercised.

§ 6. It shall not be lawful for the Comptroller and bank commissioners to exercise the powers conferred on them by the first section of this act, until three months after the annual contributions of the banks shall be paid into the treasury.

Payments to bank fund.

§ 7. Every corporation required to contribute to the bank fund, may, with the consent of the Comptroller, at any time before the expiration of the period limited by the before mentioned act, pay into the treasury the whole amount of the three per cent upon its capital by the said act required to be paid.

Annual reports.

§ 8. The annual reports required by law to be made by the several banks to the bank commissioners, shall hereafter be deposited by said banks in the office of the Secretary of State,

sealed and directed to said commissioners, on or before the twentieth day of January in each year.

CHAP. 307.

AN ACT to amend the act entitled "An act to create a fund for the benefit of the creditors of certain moneyed corporations, and for other purposes," passed April 2, 1829.

PASSED May 11, 1835.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. It shall not be lawful for any moneyed corporation to charge, or in any manner receive the premium of exchange on any draft made by such corporation, which shall be used or applied in the payment of any bill, note or other demand due to or discounted by such corporation, or to be interested directly or indirectly in the premiums on drafts which may be drawn or sold by any other corporation or by any individual.

Restriction
as to drafts.

§ 2. It shall not be lawful for any moneyed corporation to be in any manner, directly or indirectly, interested in the fees of any notary public, or entitled to, or to receive any share of the same, in any manner whatsoever; and any officer or clerk of such corporation being a notary public shall not be entitled to charge or receive more than fifty cents for protesting and giving the requisite notices upon any note or bill of exchange, check or draft, payable at the office of such corporation; nor shall any such corporation or any of its officers or clerks, charge or receive any sum for a notice upon any note, bill or draft which is not duly protested; nor shall a notary receive any fees for protesting or giving the notice on any note, bill of exchange, check or draft, in which any moneyed corporation shall be interested, of which such notary shall be a stockholder.

Fees of
public no-
taries.

[See Chap. 476, Laws of 1837, *post* for an amendment of this section.]

§ 3. It shall not be lawful for any moneyed corporation to place in the hands of any person, directly or indirectly, any money or bank notes, for the purposes of loaning or discounting of paper, or under any pretence whatever of discounting or engaging that any moneyed corporation shall discount any note or draft, if presented at its counter.

Restriction
as to loans
and dis-
counts.

§ 4. No cashier or director of a moneyed corporation within this state having banking powers, shall hold the office of director in any other moneyed corporation holding its charter under the safety fund system.

Directors.

§ 5. The bank commissioners shall have power, and it shall be their duty to examine under oath, the officers of all banks subject to their supervision, as to any offence against the provisions of this act, and shall report to the legislature the names of any such corporations as shall offend against the provisions of this act, or who shall adopt and pursue any

Bank com-
missioners
to examine
and report.

PART I.

They may
apply for an
injunction.

course of business with the intention of receiving more than the legal rate of discount.

§ 6. The commissioners shall be authorized to apply to the chancellor, pursuant to the eighteenth section of the act hereby amended, for an injunction against any moneyed corporation who shall violate any of the provisions of this act, or who shall adopt or pursue any course of business which by this act the said commissioners are directed to report to the legislature, and the court of chancery may proceed in the same manner as in any case now provided for by the eighteenth section of the act hereby amended.

See Laws of 1843, ch. 218, § 6.

CHAP. 476.

AN ACT to restrict and equalize certain fees of notaries public.

PASSED May 16, 1837.

The People of the State of New York, represented in Senate and Assembly, do enact as follows :

Fees of
notaries.

§ 1. It shall not be lawful for any notary public, directly or indirectly, to demand or receive for the protest for non-payment of any note, or for the non-acceptance or non-payment of any bill of exchange, check or draft, and giving the requisite notices and certificates of such protest, including his notarial seal, if affixed thereto, any greater fee or reward than seventy-five cents; and it shall be the duty of such notary to affix his seal to such protest free of expense, except as above, whenever he shall be requested so to do; and he shall also give a certificate under his seal free of expense, except as aforesaid under the provisions of the eighth section of the act, entitled "An act relative to proceedings in suits commenced by declaration, and for other purposes," passed April 29, 1833.

Repeal of
part of act
of 1835.

§ 2. So much of the act, entitled "An act to amend the act entitled 'An act to create a fund for the benefit of the creditors of certain moneyed corporations, and for other purposes,'" passed May 11, 1835, as restricts the fees of certain notaries public therein mentioned, is hereby repealed.

CHAP. 474.

AN ACT suspending for a limited time certain provisions of law, and for other purposes.

PASSED May 16, 1837.

The People of the State of New York, represented in Senate and Assembly, do enact as follows :

Amount of
bills or
notes to be

§ 3. The amount of notes or bills issued and in circulation of the several banks of this state, shall not hereafter exceed

the following amounts respectively: Those having capitals to the amount of one hundred thousand dollars, a circulation of one hundred and fifty thousand dollars; those having capitals to the amount of one hundred and twenty thousand dollars, one hundred and sixty thousand dollars; those having capitals to the amount of one hundred and fifty thousand dollars, one hundred and seventy-five thousand dollars; those having capitals to the amount of two hundred thousand dollars, two hundred thousand dollars; those having capitals to the amount of two hundred and fifty thousand dollars, two hundred and twenty-five thousand dollars; those having capitals to the amount of three hundred thousand dollars, two hundred and fifty thousand dollars; those having capitals to the amount of four hundred thousand dollars, three hundred thousand dollars; those having capitals to the amount of five hundred thousand dollars, three hundred and fifty thousand dollars; those having capitals to the amount of six hundred thousand dollars, four hundred and fifty thousand dollars; those having capitals to the amount of seven hundred thousand dollars, five hundred thousand dollars; those having capitals to the amount of one million of dollars, to eight hundred thousand dollars; those having capitals to the amount of one million four hundred and ninety thousand dollars, one million of dollars; those having capitals to the amount of two million of dollars, one million two hundred thousand dollars. But in all cases where a bank has a branch located at another place, that portion of the whole capital actually employed at each place of business, shall be taken and deemed the capital thereof, under the provisions of this section.*

CHAP. 350.

AN ACT in addition to the act to create a fund for the benefit of the creditors of certain moneyed corporations, and for other purposes, passed April 2d, 1829.

PASSED May 8, 1837.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. Whenever the chancellor, upon the application of the Attorney-General or the bank commissioners, shall have granted an injunction to restrain the ordinary proceedings of any banking incorporation which is subject to the provisions of the act entitled "An act to create a fund for the benefit of the creditors of certain moneyed corporations, and for other purposes," it shall be lawful for the chancellor, upon

Notes of
banks on
which in-
junction is
laid how to
be paid.

* The above section 3, it is declared by § 10 of the same act shall continue in force until repealed.

PART I.

the certificate of one or more of the bank commissioners that the amount of the debts of such banking corporation, over and above its property and effects, will not exceed two-thirds of the amount of the bank fund then paid in and invested, exclusive of all prior established claims thereon, to make an order upon the Comptroller authorizing him to take such measures as he may deem necessary for the immediate payment of the ordinary bank bills or notes of such banking corporation then in circulation, out of the said bank fund then paid in and invested.

Comptroller
to apply
safety fund
money.

§ 2. Upon the filing of a certified copy of such order in the office of the Comptroller of this state, it shall be lawful for him to apply any moneys belonging to the safety fund, except so much thereof as may be necessary to satisfy prior established claims thereon, to the redemption of such notes or bills then in circulation, in such manner as he may deem most effectual to prevent any loss to the holders of such notes or bills from a depreciation in the value thereof.

When to be
repaid.

§ 3. Any moneys belonging to the said bank fund which may be applied to the payment of such notes or bills, together with interest thereon, shall be repaid to the Treasurer of this state for the benefit of the said bank fund, out of the proceeds of the property and effects of the said banking corporation, which may remain, after payment of the debts of such corporation and the costs of the proceedings, under the direction of the chancellor.

2 D., 97.

Provision
in case of
the repeal
of bank
charters.

§ 4. The preceding sections of this act, and all the provisions therein contained, shall apply whenever the legislature shall repeal the charter of a banking corporation, and in every such case, the chancellor, bank commissioners and Comptroller, shall respectively possess and exercise the like powers, in all respects, as are above specified and conferred.

CHAP. 18.

AN ACT in relation to the Bank Fund.

PASSED February 8, 1840.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Comptrol-
ler may
issue trans-
ferable cer-
tificates of
stock.

§ 1. Whenever the Comptroller shall be lawfully required or authorized to pay or apply any moneys belonging to the bank fund to the immediate redemption of the notes or bills of any banking corporation, it shall be lawful for him to issue to the Treasurer of this state transferable certificates of stock, in the manner prescribed by chapter three hundred and twenty of the laws of eighteen hundred and thirty-one, redeemable at any time not exceeding ten years from the date thereof, to be specified in such certificate bearing an interest

not exceeding the rate of six per centum per annum, to the amount so required or authorized to be paid or applied, and deliver the same to the said treasurer, who shall thereupon cancel an equal amount of certificates of stock heretofore issued to him in trust for the said fund, under chapter two hundred and seventy-four of the laws of eighteen hundred and thirty-three, and chapter one hundred and two of the laws of eighteen hundred and thirty-seven.

§ 2. The Comptroller and Treasurer may exchange any such transferable certificates of stock for the bills or notes of any banking corporation which the Comptroller may be so required or authorized to pay or redeem, or may sell and dispose of such certificates of stock on the best terms which can be obtained; and the Comptroller shall apply the proceeds thereof to the redemption of such notes or bills, in such manner as he may deem most effectual to prevent any loss to the holders of such bills or notes from a depreciation of value thereof. Any premium obtained on the exchange or sale of such stock, shall belong to the general fund.

Such stock may be exchanged for the bills of certain banks required to be redeemed.

§ 3. It shall be lawful for any bank within this state to exchange any bills which the Comptroller may be required to redeem with the moneys belonging to the bank fund, for any stock to be issued by virtue of this act; and also to purchase, hold and dispose of such stock, which shall not be deemed to constitute any portion of the loans or discounts of such bank.

Banks may exchange such bills for said stock.

CHAP. 292.

AN ACT to prevent fraudulent practices in the management of moneyed incorporations, and to provide for a prompt replenishing of the safety fund.

PASSED May 26, 1841.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. It shall not be lawful for any moneyed corporation having banking powers, and subject to the provisions of the safety fund act, to hypothecate or pledge its own notes, or bills, designed for circulation as security for any money borrowed, or money paid or advanced for its use, beyond an amount which added to its bank notes then in actual circulation, shall exceed the sum which the said bank may lawfully issue.

Amount to which bank notes may be hypothecated.

§ 2. No such moneyed corporation shall guarantee or endorse, so as to become liable upon any of its discounted notes, bills or obligations, beyond the sum which added to its other loans and discounts shall exceed the amount of loans and discounts which such corporation may legally make.

Amount of guarantees and endorsements.

PART I.

What bills
to be deem-
ed in circu-
lation.

§ 3. All bank bills or circulating notes of every such moneyed corporation which are not in the possession of such corporation, or of its agent or correspondent for its own exclusive use and benefit, and subject to its unconditional order and disposal, shall be deemed and hereby are declared to be in circulation, and shall in all cases be included in its accounts and otherwise, as bills in circulation.

Penalty for
violation of
preceding
sections.

§ 4. Any officer of any such moneyed corporation who shall intentionally violate any part of the provisions of the preceding sections, shall be deemed and adjudged guilty of a misdemeanor, and shall upon conviction be fined at the discretion of the court, not exceeding one thousand dollars, or imprisoned in a county jail not less than six nor more than twelve months, or both.

Safety fund
how reple-
nished.

§ 5. Whenever the Comptroller shall lawfully apply any moneys belonging to the safety fund to the payment of the debts of any banking corporation, the safety fund shall be reduced by the amount of the moneys so applied below the sum required in the fourth section of the act entitled "An act to create a fund for the benefit of creditors of certain moneyed corporations, and for other purposes;" and in such case every moneyed corporation which shall be subject to said act, shall, on or before the first day of January in every year thereafter, pay to the Treasurer of this state such sum as may be required by the Comptroller, not exceeding one half of one per cent on its capital stock, as provided in said act. Such annual payments shall continue to be made by every corporation subject to said act, until the aforesaid fund shall be reimbursed and made to amount to the sum provided in the fourth section of said act; after which such annual payments shall be suspended until it shall become necessary again to resort to the said fund for the payment of the debts of any other corporation which may become insolvent, in which case the said payments shall be resumed in manner aforesaid, and so on from time to time as occasion may require.

Banks ad-
vancing
money how
reimburs-
ed.

§ 6. Corporations which shall have paid to the Treasurer any moneys as required in the last preceding section for the purpose of reimbursing said fund shall be considered creditors of any bank (for the redemption of whose notes the said fund had been reduced,) to the amount of their respective contributions to the fund for said purpose, and shall be entitled to receive their proportion of the moneys to be distributed by the receiver of said insolvent bank to the amount so paid by them respectively, unless at the time of such distribution the safety fund shall not have been replenished as provided in the last preceding section, in which case such moneys, or so much thereof as shall be sufficient to replenish said fund, shall be paid to the Treasurer of this state for the benefit of said safety fund, and the excess only shall be so distributed.

Dividends
upon banks
when they

§ 7. If the bank commissioners shall at any time upon examination believe the assets of any such moneyed corporation

to be of a doubtful character, so as in any degree to impair its capital, they may in their discretion prohibit any such corporation from making any dividend for such period as they may deem prudent, and the safety of the public may require.

CHAP. XX.
may be pro-
hibited.

§ 8. It shall be the duty of the Secretary of State to publish with the Session Laws for the year 1841, a chapter containing the "Act to create a fund for the benefit of the creditors of certain moneyed corporations, and for other purposes," passed April 2, 1829, as amended by subsequent enactments, showing in a corrected and condensed form, the provisions of law at present in operation affecting the institutions now doing business under the said acts.

Certain acts
to be pub-
lished in
Session
Laws.

A chapter containing the act to authorize the business of banking, passed April 18, 1838, as amended by subsequent enactments, showing the provisions of law at present in operation, affecting the associations or individuals now doing business under the said acts.

Prepared and published pursuant to section 10 of chap. 319, Laws of 1841.

CHAP. 260.

AN ACT to authorize the business of banking.

PASSED April 18, 1838.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. The Comptroller is hereby authorized and required to cause to be engraved and printed in the best manner to guard against counterfeiting, such quantity of circulating notes, in the similitude of bank notes in blank, of the different denominations authorized to be issued by the incorporated banks of this state, as he may from time to time deem necessary to carry into effect the provisions of this act, and of such form as he may prescribe. Such blank circulating notes shall be countersigned, numbered and registered in proper books to be provided and kept for that purpose in the office of said Comptroller, under his direction, by such person or persons as the said Comptroller shall appoint for that purpose, so that each denomination of such circulating notes shall bear the uniform signature of such register, or one of such registers.

Comptrol-
ler to pro-
vide circu-
lating notes

Which are
to be coun-
tersigned
and regis-
tered in his
office.

[Original section 1 varied by section 6 of ch. 319, Laws of 1841, by omitting the words "all be of the same similitude and" in the latter part of the section.]

19 N. Y., 37, 245; 17 N. Y., 521; 15 N. Y., 9; 9 N. Y., 486; 7 N. Y., 516, 541; 5 N. Y., 393; 18 B., 456; 17 B., 320; 8 B., 225; 5 B., 9, 186; 2 D., 280; 7 H., 504; 6 H., 370; 4 H., 20, 442; 3 H., 388; 2 H., 295; 1 H., 11, 616; 25 W., 605, 686; 23 W., 103; 22 W., 9; 3 S. Ch., 466; 2 S. Ch., 23; 1 S. Ch., 179, 207, 693; 4 Ed., 134; 3 Ed., 395; 3 Bos., 346.

§ 2. Whenever any person or association of persons, formed for the purpose of banking, under the provisions of this act,

On transfer
of stock of
this state

PART I.
circulating
notes to be
delivered.

shall lawfully transfer to the Comptroller any portion of the public stock issued or to be issued by this state, such person or association of persons, shall be entitled to receive from the Comptroller an equal amount of such circulating notes of different denominations, registered and countersigned as aforesaid; but such public stock shall in all cases be, or be made to be, equal to a stock of this state producing five per cent per annum; and it shall not be lawful for the Comptroller to take such stock at a rate above its par value, nor above its current market value.

[Original section 2 varied by section 2 of ch. 363, Laws of 1840, by omitting what related to stocks created by other states or by the United States.]

14 N. Y., 162; 7 N. Y., 328; 18 B., 456; 8 B., 436; 4 Ed., 134; H. and D., 271.

When notes
may be
circulated
as money.

§ 3. Such person or association of persons are hereby authorized, after having executed and signed such circulating notes in the manner required by law to make them obligatory promissory notes payable on demand, at the place of business within this state, of such person or association, to loan and circulate the same as money, according to the ordinary course of banking business, as regulated by the laws and usages of this state.

15 N. Y., 211.

If notes not
paid on de-
mand, to be
redeemed
by comp
troller with
trust funds.

§ 4. In case the maker or makers of any such circulating note or notes countersigned and registered as aforesaid, shall at any time hereafter, on lawful demand, during the usual hours of business, between the hours of ten and three o'clock, at the place where such note or notes is or are payable, fail or refuse to redeem such note in the lawful money of the United States, the holder of such note or notes making such demand may cause the same to be protested for non-payment by a notary public under his seal of office in the usual manner; and the Comptroller, on receiving and filing in his office such protest, shall forthwith give notice in writing to the maker or makers of such note or notes to pay the same; and if he or they shall omit to do so for ten days after such notice, the Comptroller shall immediately thereupon (unless he shall be satisfied that there is a good and legal defence against the payment of such note or notes) give notice in the state paper, that all the circulating notes issued by such person or association, will be redeemed out of the trust funds in his hands for that purpose; and the Comptroller shall be required to apply the said trust funds belonging to the maker or makers of such protested notes to the payment pro rata of all such circulating notes, whether protested or not, put in circulation by the maker or makers of such protested notes, pursuant to the provisions of this act, and to adopt such measures for the payment of such notes, as will in his opinion most effectually prevent loss to the holders thereof.

See Laws of 1851, ch. 203; 9 Pai., 357.

§ 5. The Comptroller may give to any person or association of persons so transferring stock in pursuance of the provisions of this act, powers of attorney to receive interest or dividends thereon, which such person or association may receive and apply to their own use; but such powers may be revoked upon such person or association failing to redeem the circulating notes so issued, or whenever, in the opinion of the Comptroller, the principal of such stock shall become insufficient security; and the said Comptroller, upon the application of the owner or owners of such transferred stock in trust, may, in his discretion, change or transfer the same for other stocks of the kinds before specified in this act, or may retransfer the said stocks, or any part thereof, or the mortgages, or any of them hereinafter mentioned and provided for, upon receiving and canceling an equal amount of such circulating notes delivered by him to such person or association, in such manner that the circulating notes shall always be secured in full either by stocks or by stocks and mortgages, as in this act provided.

CHAP. XX.
Powers of attorney to be given to owners to receive dividends on trust funds. When to be revoked.

Stocks may be changed or transferred.

§ 6. The bills or notes so to be countersigned, and the payment of which shall be so secured by the transfer of public stocks, shall be stamped on their face, "Secured by the pledge of public stocks."

Bills how to be stamped.

§ 7. Instead of transferring public stocks as aforesaid to secure the whole amount of such bills or notes, it shall be lawful for such person or association of persons, in case they shall so elect before receiving any of the said bills or notes, to secure the payment of one half of the whole amount so to be issued, by transferring to the Comptroller bonds and mortgages upon real estate, bearing at least six per cent interest of this state, payable annually or semi-annually; in which case all such bills or notes issued by the said person or association of persons, shall be stamped on their face, "Secured by pledge of public stocks and real estate."

Bonds and mortgages to be taken for one half of notes delivered.

How bills to be stamped in such case.

19 N. Y., 163.

§ 8. Such mortgages shall be only upon improved, productive, unincumbered lands within this state, worth independently of any buildings thereon, at least double the amount for which they shall be so mortgaged; and the Comptroller shall prescribe such regulations for ascertaining the title and the value of such lands as he may deem necessary; and such mortgages shall be payable within such time as the Comptroller may direct.

Character of mortgages, title and value of lands, how ascertained

§ 9. The Comptroller may, in his discretion, reassign the said bonds and mortgages, or any of them, to the person or association who transferred the same, on receiving other approved bonds and mortgages of equal amount; and when any sum of the principal of the bonds and mortgages transferred to the Comptroller shall be paid to him, he shall notify the person or association that transferred the bonds and mortgages of such payment, and may pay the same to such person or

When bond and mortgages may be reassigned.

Proceeding when principal of trust fund is paid to comptroller

PART I.

association on receiving other approved bonds and mortgages of equal amount.

14 B., 196.

Owners of mortgages to receive interest except in certain cases.

§ 10. The person or association of persons assigning such bonds and mortgages to the Comptroller, may receive the annual interest to accrue thereon, unless default shall be made in paying the bills or notes to be countersigned as aforesaid, or unless in the opinion of the Comptroller the bonds and mortgages or stocks so pledged shall become an insufficient security for the payment of such bills or notes.

When pledged securities to be sold and how.

§ 11. In case such person or association of persons shall fail or refuse to pay such bills or notes on demand in the manner specified in the fourth section of this act, the Comptroller, after the ten days' notice therein mentioned, may proceed to sell at public auction the public stocks so pledged or the bonds and mortgages so assigned, or any or either of them, and out of the proceeds of such sale shall pay and cancel the said bills or notes, default in paying which shall have been made as aforesaid; but nothing in this act contained shall be considered as implying any pledge on the part of the state for the payment of said bills or notes beyond the proper application of the securities pledged to the comptroller for their redemption.

Proceeds to be applied to payment of bills.

9 Pai., 357.

Pledged securities to be held exclusively for redemption of circulating notes.

§ 12. The public debt and bonds and mortgages to be deposited with the Comptroller by any such person or association, shall be held by him exclusively for the redemption of the bills or notes of such person or association put in circulation as money, until the same are paid.

9 N. Y., 483; 7 N. Y., 538; 29 B., 243.

Plates, &c., to remain in custody of comptroller.

Expenses in executing this act how paid.

§ 13. The plates, dies and materials to be procured by the Comptroller, for the printing and making of the circulating notes provided for hereby, shall remain in his custody and under his direction; and the expenses necessarily incurred in executing the provisions of this act, shall be audited and settled by the Comptroller, and paid out of any moneys in the treasury, not otherwise appropriated; and for the purpose of reimbursing the same, the said Comptroller is hereby authorized and required to charge against and receive from, such person or association applying for such circulating notes, such rate per cent thereon as may be sufficient for that purpose, and as may be just and reasonable.

Comptroller not to countersign bills beyond securities pledged.

§ 14. It shall not be lawful for the Comptroller, or other officer, to countersign bills or notes for any person or association of persons, to an amount in the aggregate exceeding the public debt, or public debt and bonds and mortgages at their value, as provided in the second section of this act, deposited with the Comptroller by such person or association; and any Comptroller or other officer who shall violate the provisions of this section shall, upon conviction, be adjudged guilty of

a misdemeanor, and shall be punished by a fine not less than five thousand dollars, or be imprisoned not less than five years, or by both such fine and imprisonment.

2 H., 241.

§ 15. Any number of persons may associate to establish offices of discount, deposit and circulation, upon the terms and conditions, and subject to the liabilities prescribed in this act; but the aggregate amount of the capital stock of any such association shall not be less than one hundred thousand dollars.

32 B., 620; 29 B., 243; 2 H., 154; 24 W., 345; 17 How. P. R., 110.

§ 16. Such persons, under their hands and seals shall make a certificate which shall specify,

1. The name assumed to distinguish such association, and to be used in its dealings:

2. The place where the operations of discount and deposit of such association are to be carried on, designating the particular city, town or village:

3. The amount of the capital stock of such association, and the number of shares into which the same shall be divided:

4. The names and places of residence of the shareholders, and the number of shares held by each of them respectively:

5. The period at which such association shall commence and terminate; which certificate shall be proved or acknowledged and recorded in the office of the clerk of the county where any office of such association shall be established, and a copy thereof filed in the office of the Secretary of state.

10 N. Y., 550; 32 B., 620; 7 H., 530; 5 H., 490; 2 H., 154; 3 S. Ch. 466; 3 S. S. C., 161.

§ 17. The certificate required by the last preceding section to be recorded and filed in the offices of the clerk of the county and Secretary of state as aforesaid, or copies thereof, duly certified by either of those officers, may be used as evidence in all courts and places for and against any such association.

§ 18. Such association shall have power to carry on the business of banking, by discounting bills, notes and other evidences of debt; by receiving deposits; by buying and selling gold and silver bullion, foreign coins and bills of exchange, in the manner specified in their articles of association for the purposes authorized by this act; by loaning money on real and personal security; and by exercising such incidental powers as shall be necessary to carry on such business; to choose one of their number as president of such association, and to appoint a cashier, and such other officers and agents as their business may require, and to remove such president, cashier, officers and agents at pleasure, and appoint others in their place.

22 N. Y., 522; 19 N. Y., 152; 17 N. Y., 521; 15 N. Y., 9; 5 N. Y., 389; 24 B., 301; 5 B., 9; 1 D., 520; 6 H., 370; 4 H., 442; 2 H., 295; 3 S. S. C., 137, 161; 4 Ed., 134; 7 How. P. R., 144; Cl. Ch., 351.

CHAP. XX.
Penalties
for viola-
tion of this
provision.

Number of
associates
and amount
of capital
stock.

Association
to make a
certificate,
and its con-
tents.

How proved
recorded,
and filed.

Certificates
may be
used as evi-
dence.

General
powers of
association.

President
and cashier.

PART I.
Shares to be personal property and how transferable.

Rights of shareholders.

No change in articles to impair right of creditors.

Association not dissolved by death, &c., of shareholders.

Articles may provide for increase of capital, &c.

Contracts how signed, and suits how prosecuted.

Actions may be maintained against president of association.

Not to abate by his death or removal. Judgment enforced against joint property only.

Shareholders not personally liable unless articles of association make them so.

For what purposes to hold and convey real estate.

§ 19. The shares of said association shall be deemed personal property, and shall be transferable on the books of the association in such manner as may be agreed on in the articles of association; and every person becoming a shareholder by such transfer, shall, in proportion to his shares, succeed to all the rights and liabilities of prior shareholders; and no change shall be made in the articles of association by which the rights, remedies or security of its existing creditors shall be weakened or impaired. Such association shall not be dissolved by the death or insanity of any of the shareholders therein.

5 N. Y., 389; 25 B., 413; 3 S. S. C., 161.

§ 20. It shall be lawful for any association of persons organized under this act, by their articles of association, to provide for an increase of their capital and of the number of the associates, from time to time as they may think proper.

§ 21. Contracts made by any such association, and all notes and bills by them issued and put in circulation as money, shall be signed by the president or vice-president and cashier thereof; and all suits, actions and proceedings brought or prosecuted by or on behalf of such association, may be brought or prosecuted in the name of the president thereof; and no such suit, action or proceeding shall abate by reason of the death, resignation or removal from office of such president, but may be continued and prosecuted according to such rules as the courts of law and equity may direct, in the name of his successor in office, who shall exercise the powers, enjoy the rights and discharge the duties of his predecessor.

19 N. Y., 156; 3 N. Y., 19; 32 B., 620; 5 B., 9; 1 D., 522; 4 H., 442; 2 H., 154; 2 S. Ch., 23; 1 S. S. C., 693.

§ 22. All persons having demands against any such association, may maintain actions against the president thereof; which suits or actions shall not abate by reason of the death, resignation or removal from office of such president, but may be continued and prosecuted to judgment against his successor: and all judgments and decrees obtained or rendered against such president for any debt or liability of such association shall be enforced only against the joint property of the association, and which property shall be liable to be taken and sold by execution under any such judgment or decree.

9 Pal., 410; 24 W., 345.

§ 23. No shareholder of any such association shall be liable in his individual capacity for any contract, debt or engagement of such association, unless the articles of association by him signed shall have declared that the shareholder shall be so liable.

§ 24. It shall be lawful for such association to purchase, hold and convey real estate for the following purposes:

1. Such as shall be necessary for its immediate accommodation in the convenient transaction of its business; or

2. Such as shall be mortgaged to it in good faith, by way of security for loans made by, or moneys due to, such association; or

3. Such as shall be conveyed to it in satisfaction of debts previously contracted in the course of its dealings; or

4. Such as it shall purchase at sales under judgments, decrees or mortgages held by such association.

The said association shall not purchase, hold or convey real estate in any other case or for any other purpose; and all conveyances of such real estate shall be made to the president or such other officer as shall be indicated for that purpose in the articles of association; and which president or officer, and his successors from time to time may sell, assign and convey the same, free from any claim thereon, against any of the shareholders or any person claiming under them.

Prohibited holding for any other purpose. Real estate how conveyed. Sale free from any claim thereon against shareholders.

10 N. Y., 550; 1 S. Ch., 179.

§ 25. Upon the application of creditors or shareholders of any such association, whose debts or shares shall amount to one thousand dollars, and stating facts verified by affidavit, the chancellor may, in his discretion, order a strict examination to be made by one of the masters of his court, of all the affairs of such association, for the purpose of ascertaining the safety of its investments, and the prudence of its management; and the result of every such examination, together with the opinion of the master and of the chancellor thereon, shall be published in such manner as the chancellor shall direct, who shall make such order in respect to the expenses of such examination and publication as he may deem proper.

When chancellor to order examination of affairs of association.

Result may be published.

[Section 26 of original act repealed by section 5 of chapter 319, Laws of 1841.]

§ 27. If such association shall neglect to make out and transmit the statement required in the last preceding section, for one month beyond the period when the same is required to be made, or shall violate any of the provisions of this act, such association may be proceeded against and dissolved by the court of chancery, in the same manner as any moneyed corporation may be proceeded against and dissolved.

Penalty for neglecting to report, or for violating any provision of this act.

3 Ed., 395.

§ 28. If any portion of the original capital of any such association shall be withdrawn for any purpose whatever whilst any debts of the association remain unsatisfied, no dividends or profits on the shares of the capital stock of the association shall thereafter be made, until the deficit of capital shall have been made good, either by subscription of the shareholders, or out of the subsequently accruing profits of the association; and if it shall appear that any such dividends have been made, it shall be the duty of the chancellor to make the necessary orders and decrees for closing the affairs of the association, and distributing its property and effects among its creditors and shareholders.

If capital withdrawn no dividends to be made.

Penalty for making dividends in such case.

3 Ed., 395.

PART I.
Holder of
bill entit-
led to 14
per cent
in case of
non-pay-
ment on
demand.

§ 29. Such association shall be liable to pay the holder of every bill or note put in circulation as money, the payment of which shall have been demanded and refused, damages for non-payment thereof, in lieu of interest, at and after the rate of fourteen per cent per annum, from the time of such refusal until the payment of such evidence of debt, and the damages thereon.

See Laws of 1851, ch. 203; 8 Cow., 88; 5 Cow., 161.

List of
names of
sharehold-
ers.
to be kept
and where
filed

§ 30. The president and cashier of every association formed pursuant to the provisions of this act, shall at all times keep a true and correct list of the names of all the shareholders of such association, and shall file a copy of such list in the office of the clerk of the county where any office of such association may be located, and also in the office of the Comptroller, on the first Mondays of January and July in every year.

Bills less
than \$1000
not to be
made paya-
ble at any
place
except the
office of
the associa-
tion.

§ 31. It shall not be lawful for any association former under the provisions of this act, to make any of its bills or notes of a denomination less than one thousand dollars, to be put in circulation as money, payable at any other place than at the office where the business of the association is carried on and conducted.

Repealing
clause.

§ 32. The legislature may at any time alter or repeal this act.

21 N. Y., 16; 2 D., 380; 1 D., 9; 7 H., 504.

[§ 33 of original act repealed by § 6 of chapter 363, Laws of 1840.]

CHAP. 363.

AN ACT to amend the act entitled "An act to authorize the business of banking."

PASSED May 14, 1840.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. [Substitutes a new section for the second section of the original act, which is inserted in the preceding publication of the same.]

17 B., 386; 5 B., 27; 3 H., 388.

Not to
affect
stocks now
held by
comptroller

§ 2. The provisions of the said second section shall not be construed to prevent the stocks now held by the Comptroller under the act hereby amended, from being hereafter transferred to and received by him at their market value in the same manner as though this act had not been passed.

Amount of
securities
to be depos-
ited.

§ 3. No association of persons shall commence the business of banking under the said act, until such association shall have deposited with the Comptroller the securities required by law, to the amount of one hundred thousand dollars.

See Laws of 1844, ch. 281.

Notes to be
payable on
demand,

§ 4. No banking association or individual banker as such shall issue or put in circulation any bill or note of said asso-

ciation or individual banker, unless the same shall be made payable on demand and without interest; and every violation of this section by any officer or member of a banking association or by any individual banker shall be deemed and adjudged a misdemeanor, punishable by fine or imprisonment, or both, in the discretion of the court having cognizance thereof.

See Laws of 1850, ch. 251; 17 N. Y., 539; 15 N. Y., 9; 14 N. Y., 178; 7 N. Y., 515; 3 N. Y., 19; 26 B., 568; 17 B., 309, 384; 8 B., 233, 436; 3 B., 222; 11 Pai., 635; 10 Pai., 114; 3 D., 70; 2 H., 242; 4 Ed., 134, 332.

CHAP. XX.
and with-
out interest
Penalty.

§ 5. It shall be the duty of the Comptroller to receive mutilated circulating notes issued by him, and to deliver in lieu thereof other circulating notes to the same amount.

Mutilated
notes may
be exchang-
ed.

9 Pai., 459.

§ 6. The thirty-third section of the act hereby amended is repealed.

Section
repealed.

§ 7. Whenever the securities deposited for the redemption of circulating notes, shall in the opinion of the Comptroller become insufficient for that purpose, he may receive the dividend on all stocks as well as the interest on bonds and mortgages, and shall deposit the same in some safe bank or banking association in the city of Albany, in his name, in trust for the association or banker to whom the same may belong. The deposit to be made on such terms and at such rate of interest as the Comptroller may deem most conducive to the interest of such association or banker, and to be withdrawn and paid over, whenever in the opinion of the Comptroller, the securities of such association or banker, shall be sufficient to warrant it.

When in-
terest and
dividends
may be re-
turned.

§ 8. It shall be the duty of the joint committee, annually chosen to examine the Treasurer's accounts, to examine such of the securities deposited in the Comptroller's office, by banking associations, and individual bankers, together with books and papers therein relating to the business of banking, as the said committee may deem necessary, to enable them to report the true state and conditions of that department to the legislature.

Committee
of legisla-
ture, to ex-
amine bank
department

§ 9. It shall be lawful for the president of any banking association, or any individual banker, to make or execute bonds and mortgages, direct to the comptroller to secure the payment of circulating bills or notes, issued under the act to authorize the business of banking, and all such bonds and mortgages heretofore received by the comptroller, for such purpose, shall be valid.

Certain
bonds, &c.,
directly to
comptroller

§ 10. All fees for protesting the circulating notes issued by any banking association or individual banker, shall be paid by the person procuring the services to be performed, for which such association or banker, shall be liable, but no part of the securities deposited by such association or banker, shall be applied to the payment of such fees.

Fees of
protesting,
how paid.

§ 11. Every banking association and individual banker,

Powers of
bank com-

PART I.
missioners,
extended to
associa-
tions, &c.

carrying on banking business, or who shall hereafter carry on banking business, under the act to authorize the business of banking, shall be subject to the inspection and supervision of the bank commissioners, whose powers and duties, shall be the same, in respect to said banking association or individual banker, as they are, or may be, in respect to any of the incorporated banks of this state.

See Laws of 1843, ch. 218, § 6.

When and
how associ-
ations, to
be proceed-
ed against.

§ 12. In case any of the said associations or individual bankers, shall refuse to submit its books, papers and concerns, to the inspection of said commissioners, or either of them, or whose officers shall refuse to submit to be examined upon oath, touching the concerns of such association or individual banker, by said commissioners, or either of them, or which shall be found to have violated any law of this state, binding upon such association or individual banker, such association or individual banker, shall be liable to be proceeded against by said commissioners, in the same manner and with the like effect as any incorporated bank may be proceeded against for a violation of its charter.

See Laws of 1843, ch. 218, § 6.

[Section 13 repealed by Laws of 1843, ch. 218, § 6.]

Former act
not to pre-
vent cer-
tain corpor-
ations own-
ing stock
of associa-
tions.

§ 14. Nothing in the act hereby amended, shall be construed to prevent any body corporate, which may have power to hold, receive or transfer, shares of public debt, bank stock, or the like personal property, from also holding, receiving or transferring any transferable shares of the stock of associations organized under the said act.

CHAP. 319.

AN ACT to amend the act entitled "An act to authorize the business of banking."

PASSED May 26, 1841.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Associa-
tions and
bankers to
return a full
statement
to bank
commis-
sioners
yearly.

§ 1. Every banking association and individual banker carrying on banking business, or who shall hereafter carry on banking business under the act to authorize the business of banking, shall annually make out and transmit to the bank commissioners in the form prescribed by them, a full statement of its affairs, verified by the oaths of its president and cashier, which statements shall be deposited by such banking association or individual banker respectively, in the office of the secretary of state, sealed and directed to said commissioners on or before the twentieth day of January in each year, after the passage of this act, or after the time of their having

respectively commenced the business of banking as prescribed by the act hereby amended.

3 H., 388; 2 S. Ch., 23. Sections 1, 2, 3, 4 are affected by Laws of 1843, ch. 218.

§ 2. Such statement so transmitted shall contain,

Statement
how to be
made out.

1. The amount of the certified stock of the capital stock of the banking association or individual banker, paid in or invested according to law, or in pursuance of its articles of association and the amount of such stock as then possessed:

2. The value of the real estate of the association or individual banker, specifying what portion is occupied by the association or individual banker for the transaction of business:

3. The shares of stock held by such association or individual banker, whether absolutely or as collateral security, specifying each kind and description of stock and the number and value of the shares of each:

4. The debts owing to the association or individual banker, specifying such as are due from moneyed or other corporations or associations, the names of such corporations or associations, and the amount due from each, and also specifying the amount secured by bond and mortgage or judgment; the amount which ought to be included in the computation of losses, and the total amount of such debts then collectible:

5. The amount of debts owing by the association or individual banker, specifying such as are payable on demand, and such as are due to moneyed or other corporations, associations or individual bankers, the names of such corporations or associations or individual bankers, and the amount due to each:

6. The amount of claims against the association or individual banker, not acknowledged by it or him as debts:

7. The amount for which the association or individual banker is bound as surety, or for which it may become liable on the happening of contingent events, whether upon policies of insurance or otherwise:

8. The amount of the notes or bills then in circulation, of said association or individual banker, of loans and discounts and of specie on hand:

9. The amount on the first of July next preceding, of notes or bills in circulation, of loans and discounts, and of specie on hand of such association or individual banker:

10. The amount of the losses of the association or individual banker (if any) charged, specifying whether charged on its or his capital or profits since the last preceding statement, and of the dividends declared and made during the same period:

11. The amount of real estate mortgages and of state stocks, together with the description of such stocks deposited by each association or individual banker, with the Comptroller as security for the circulating notes issued; the market value of said stocks as near as the same can be ascertained, and the date to which payment of interest has been made upon such real

PART I.

estate mortgages and stocks, and whether said interest has been paid to such banking association or individual banker, or passed to their or his credit on the books of the Comptroller.

Penalty for neglect.

§ 3. Every association that shall neglect to make out and transmit the statement required as prescribed in the first section of this act, may be proceeded against and dissolved as an insolvent association, and every individual banker subject to this law who shall so neglect, shall be restrained from the further prosecution of his business.

Bank commissioners to prepare forms of statements.

§ 4. It shall be the duty of the bank commissioners to prepare forms of the statements, and to transmit a copy thereof together with such instructions as they may deem necessary, to every association or individual banker which is or shall be bound to furnish such statements under the provisions of this act. The expenses of printing the forms of said statements and instructions shall be paid by the Treasurer on the warrant of the Comptroller, and the amount thereof retained by the Comptroller and paid into the treasury, out of the interest of the securities deposited with the Comptroller by the said banking associations and individual bankers, in proportion to the amount of securities deposited by each.

2 H., 242.

§ 5. The twenty-sixth section of the act hereby amended is repealed.

[Sec. 6 substitutes a new one for the first section of the act of 1838, which has been inserted accordingly.]

Assignments made by comptroller may be recorded.

§ 7. Every assignment of any bond or mortgage executed by the Comptroller under his official seal, in pursuance of the provisions of the said act, or which may be otherwise authorized by law, may be recorded in the same manner and with the like effect as a deed regularly acknowledged or proved before any officer authorized by law to take the proof and acknowledgment of deeds.

[For Sections 8 and 9 see Laws of 1859, ch. 236.]

Secretary of state to publish act of April 18, 1838, and amendments.

§ 10. It shall be the duty of the Secretary of State to publish with the session laws for the year 1841, a chapter containing the act to authorize the business of banking, passed April 18, 1838, as amended by subsequent enactments showing in a corrected and condensed form, the provisions of law at present in operation affecting the associations or individuals now doing business under the said acts.

[The following acts being equally applicable to moneyed corporations under the safety fund act, and to associations under the general banking law, are here published together, to avoid printing them twice.]

CHAP. 355.

AN ACT concerning foreign bank notes.

PASSED May 7, 1839.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. From and after the passage of this act it shall be unlawful for any incorporated banking institution within this state, and for any association, or any individual or individuals authorized to carry on the business of banking by virtue of the act entitled "An act to authorize the business of banking," passed the 18th day of April, 1838, to receive, pay out, give or offer in payment, as money, to circulate or attempt to circulate as money, any bill, note or other evidence of debt, issued, or purporting to have been issued by any corporation, association or individual, situated or residing without this state, and which bill, note, or other evidence of debt, shall, upon any part thereof, purport to be payable or redeemable at any place, or by any person, association or corporation within this state.

Restriction
as to for-
eign bank
notes.

17 B., 332; 3 D., 241.

§ 2. It shall not be lawful for any incorporated banking institution within this state, or any association, or individual or individuals authorized to carry on the business of banking by virtue of the said act entitled "An act to authorize the business of banking," directly or indirectly to procure or receive from any corporation, association or individual, situated or residing without this state, any bank bill or note or other evidence of debt in the similitude of a bank bill or note issued or purporting to have been issued by such last mentioned corporation, association or individual, with the intent to issue and pay out, or in any way to utter or circulate the same as money, or to issue, pay out, or to utter or circulate the same when procured or received as aforesaid as money. But nothing in this section contained shall prohibit the said banking institutions, associations and individual bankers in the first part of this section mentioned, from receiving from their dealers and customers such foreign notes as are allowed by law to be circulated within this state in the regular and usual course of business, or from paying out the same when so received as last aforesaid.

Restriction.

See Laws of 1853, ch. 223.

PART I.
Notes
under par.

§ 3. It shall not be lawful for any incorporated banking institution within this state, or any association, or any individual or individuals authorized to carry on the business of banking by virtue of the said act entitled "An act to authorize the business of banking," directly or indirectly to lend, or pay out for paper discounted or purchased by them, any bank bill, or note or other evidence of debt which is not received at par by the said banking institution, association or individual for debts due to the said banking institution, association or individual.

19 N. Y., 39.

Penalty.

§ 4. Every corporation, and every association and individual authorized to carry on the business of banking, who shall offend against any of the provisions of the previous sections of this act, shall forfeit for each and every offence the sum of one thousand dollars, to be recovered with costs of suit in the name and for the use of any person who shall sue for the same and prosecute such suit to judgment in any court having cognizance thereof; and every officer and clerk of such corporations and associations, and every such individual banker and his clerks and servants, who shall knowingly act or assist in any violation of any provision of this act, shall, upon conviction, be deemed guilty of a misdemeanor, and shall be punished by fine or imprisonment, or both, in the discretion of the court before which such conviction shall be had; but such fine shall not exceed five hundred dollars, and that such imprisonment shall not exceed six months.

18 N. Y., 243.

CHAP. 202.

AN ACT relating to the redemption of bank notes.

PASSED May 4, 1840.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Agents to
be appoint-
ed in New
York or
Albany.

§ 1. Every moneyed incorporation in this state having banking powers and issuing bills or notes of circulation, and every banking association and individual banker, carrying on banking business under the act to authorize the business of banking, except those whose place of business is in the cities of New York, Albany or Brooklyn, shall, on or before the first day of July next, appoint an agent, who shall keep an office in the city of New York or Albany, for the redemption of all circulating notes issued by such corporation, banking association or individual banker, which shall be presented to such agent for payment or redemption.

See Laws of 1851, ch. 203.

CHAP. XX.
Their commissions to be filed in comptroller's office.

§ 2. Such agent shall be appointed in writing, and such appointment in writing shall be delivered to the Comptroller on or before the day above mentioned and filed in his office; and any corporation having banking powers, banking association, banker or other person, may be an agent for the purposes of this act; and if any such incorporation, association or banker, shall omit to appoint such agent within the time above mentioned, the Comptroller shall appoint such agent for such corporation, association or banker.

§ 3. The Comptroller, immediately after the said first day of July, shall publish, during such time as he may deem proper, a list of such agents in the state paper, and in at least two daily newspapers in the city of New York, the expense whereof shall be paid by the corporation, associations and bankers above mentioned.

List of agents to be published.

§ 4. It shall be the duty of every such corporation, banking association and individual banker, out of the cities of New York, Albany and Brooklyn, to redeem and pay on demand all circulating notes issued by such corporation, banking association or individual banker, presented for redemption or payment at the office of their said agent in the city of New York or of Albany, at a rate of discount not exceeding one-half of one per cent.

Notes to be redeemed.

See Laws of 1851, ch. 203; 21 N. Y., 494.

§ 5. Every such corporation, banking association or individual banker, whose agent shall neglect or refuse to redeem their notes on demand as aforesaid, shall pay to the person making such demand interest upon the notes so demanded, at the rate of twenty per cent per annum; and if such redemption and payment of interest is not made at said office within twenty days from the time when first demanded, such corporation, banking association or individual banker shall be liable to be proceeded against by the bank commissioners, in the same manner and with the like effect as any incorporated bank may be proceeded against for a violation of its charter; and such corporation, banking association or individual banker, shall not thereafter issue or put in circulation any of their bills or notes; and the Comptroller shall, in that case, proceed in the same manner as is directed in the fourth section of the act entitled "An act to authorize the business of banking," passed April 18, 1838.

Penalties for neglect.

§ 6. Every association and individual banker who shall hereafter commence business under the act to authorize the business of banking, shall, upon first receiving any circulating notes from the Comptroller, appoint an agent for the purposes of this act, and be subject in all respects to the provisions of this act; and the Comptroller is hereby directed not to deliver any circulating notes to such association or banker, until such appointment is made and filed in his office; and such appointment shall be immediately published by the Comptroller in manner aforesaid.

Agents to be appointed by new associations.

PART I.
Appoint-
ments may
be revoked.

A number
of banks
may ap-
point a
common
agent.

Saving
clause.

§ 7. Appointments of agents made in pursuance of this act, may be revoked, and new appointments of agents may be made, from time to time, by delivering such revocation and appointment to the Comptroller, who shall cause the same to be published as aforesaid.

§ 8. It shall be lawful for any number of incorporated banks, banking associations and private bankers, by agreement, to associate together for raising a joint fund to be placed in the hands of their common agent, for the redemption of their circulating notes in the city of New York or Albany, and also the circulating notes of other incorporated banks, banking associations and individual bankers, in such manner and under such regulations as may be agreed upon, and to employ such agents and clerks as they may deem necessary to carry on the business of such common agency; but nothing in this section contained shall authorize the redemption or purchase by such agency of any circulating notes at a discount of more than one half of one per cent, nor to relieve or discharge such incorporated bank, banking association or individual banker, from any duty or liability required or imposed by this act.

§ 9. Nothing in this act contained shall be so construed as to authorize any incorporated bank, banking association or individual banker, to purchase, buy in, or take up, directly or indirectly, their circulating notes at an amount less than what purports to be due thereon at any other place, or in any other manner than is directed in and by this act.

CHAP. 130.

AN ACT respecting the appointment of receivers of moneyed institutions.

PASSED April 27, 1841.

[This chapter, included in the Legislative compilation of 1841, was repealed by Laws of 1842, ch. 3.]

CHAP. 56.

AN ACT respecting suits and legal proceedings by or against banking associations.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

PASSED March 16, 1841.

Actions
may be
commenced
by declara-
tion.

§ 1. Actions instituted against any association established or to be established under the provisions of the "Act to authorize the business of banking," passed April 18, 1838, or of any act amending the same, may be commenced by decla-

ration, and copies of such declaration may be served on the president or cashier of such association, and in their absence on any director at the usual place of business thereof, or in such other manner as the court in which such action may be brought may direct. But all such actions shall nevertheless be commenced only against the persons and in the manner prescribed or permitted by the acts above mentioned.

§ 2. Any person who shall be or shall have been an associate or shareholder of any such association, may in respect of any demand which he may have, either solely or jointly with any other person, against such association, commence and prosecute, either solely or jointly (as the case may be,) any action suit or other proceeding in law and equity against the president of such association; and any president of such association may commence and prosecute any action, suit or other proceeding in law or equity, against any person who may be or may have been an associate or shareholder of such association, either alone or jointly with any other person against whom such association may have any demand whatever. All such suits or proceedings by or against such president, shall be conducted and have the same legal effect as if such associate or shareholder had never been a member of such association. Nor shall any action or suit be in any way affected by reason of the plaintiff's or defendant's or any other person who may be in any way interested in such action, being or having been a shareholder or associate of such association. Nor shall it be necessary in any process, pleading or proceeding in behalf of or against any such association, to name the individuals composing the same.

§ 3. No claim or demand which any associate or shareholder may have in respect to his share or interest in the capital or joint stock of any such association, or of any dividends, interest or profit thereon, shall be capable of being set off either at law or in equity against any demand which such association may have against any associate or shareholder thereof. But all other demands may be set off in the same manner as in suits between individuals; and in any suit against the president of any such association as president thereof, he may set off demands belonging to it, in the same manner and with same effect as if such association was the nominal party in the cause.

Shareholders and associations may respectively maintain suits against the other.

Associates interest in stock not to be set off against demands of the association.

CHAP. 3.

AN ACT to repeal an act entitled "An act respecting the appointment of receivers of moneyed institutions," passed April 27th, 1841, and to limit the compensation of receivers.

PASSED January 22, 1842.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Repeal.

§ 1. The act entitled "An act respecting the appointment of receivers of moneyed institutions," passed April 27th, 1841, is hereby repealed.

Pay of receivers.

§ 2. Receivers of moneyed institutions shall be entitled to the same commissions and compensation for their services as are now allowed by law to executors and administrators, and no greater or other commissions or compensation than is hereby allowed, shall be received or retained by them.

CHAP. 218.

AN ACT to abolish the office of Bank Commissioner, and for other purposes.

PASSED April 18, 1843.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Banks to return statement of circulating notes to comptroller and deposit their plates.

Time allowed to countersign and register notes.

§ 1. Every chartered bank shall take an account of its notes for circulation on the first day of July, eighteen hundred and forty-three, and shall return to the comptroller, under the oath of the president and cashier, a statement of all the notes of the bank which it has in possession, or in any way outstanding or in circulation on that day, specifying the amount of bills of each denomination, and the aggregate amount of the whole circulation, and shall, at the same time, deposit with the comptroller their plates, and no bank shall after the time in that day to which the return of the president and cashier is made up, issue any of its own notes which have not been countersigned and registered by the comptroller; but if the comptroller shall be unable to supply any bank with countersigned and registered notes as fast as such bank may require, on and after the first of July, eighteen hundred and forty-three, such bank may be permitted by the comptroller to re-issue so much of its old circulation within the limits prescribed by law, as may be necessary, not exceeding the amount returned to be outstanding on that day, nor shall any such issue take place until an application has first been made to the comptroller for countersigned and

registered notes, and refused; and provided, also, that the stockholders of any chartered bank shall be individually liable for all the notes of its old circulation which shall be outstanding on and after the first of July, eighteen hundred and forty-four; and after the first day of July, eighteen hundred and forty-four, no bank shall pay out any note of any bank which has not been countersigned and registered at the comptroller's office, as herein provided. And all the notes of any bank issued prior to the first July, eighteen hundred and forty-three, not countersigned and registered, or delivered to the comptroller to be countersigned and registered, shall on or before the first of July, eighteen hundred and forty-four, be redeemed and destroyed in the presence of the comptroller, or of some person to be appointed by him for that purpose. And a certificate of the counting and destruction of the notes certified to be destroyed shall be signed and sworn to by the comptroller or his agent, and an agent appointed by the bank, and deposited in the comptroller's office.

Certain
notes to be
redeemed
and de-
stroyed.

§ 2. It shall be the duty of the comptroller to receive and safely keep the plates, to be delivered to him by the banks, as prescribed in section first; and at all times to cause to be printed from said plates, and deliver to each bank such notes, and of such denomination as is now allowed by law, as the bank owning such plates may require, not exceeding together with outstanding old circulation, and with the notes previously received, the amount of circulation now allowed to such banks by law, and it shall also be the duty of the comptroller, to employ suitable persons whose duty it shall be to countersign such bills in such uniform manner as the comptroller may prescribe, and every note so countersigned, shall, before it is delivered to the bank, be registered in a book to be kept by the comptroller for that purpose; and the expenses of preparing, countersigning and registering such notes, shall be paid to the comptroller by the banks receiving the same, in proportion to the number of notes received. And it shall be competent for the comptroller, when the plates of any bank are worn or otherwise unfit for use, to require such bank to furnish new plates, or to procure them himself, at the expense of such bank.

Comptrol-
ler to keep
plates and
print and
deliver
notes to
banks, re-
gistered
and coun-
tersigned.

§ 3. It shall be the duty of the comptroller, secretary of state and treasurer, on or before the first Tuesdays of January, April, July and October in each year, to fix upon and determine some Saturday in the quarter of a year, then ended, in respect to which every incorporated bank, banking association and individual banker in the state shall make a report of the character hereinafter specified. Immediately after each determination of such Saturday, the officers hereinbefore named shall cause notice thereof to be published daily for six successive days in such newspaper published in the city of Albany as shall, for the time being, have the publication of legal notices under the act entitled "An act to provide for the pub-

Duty of
comptroller
sec. of state
and treasur-
er in rela-
tion to
quarterly
reports.

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lic printing," passed March 5, 1846, or shall serve a copy of such notice upon each incorporated bank, banking association and individual banker in the state, by delivering the same to some officer or clerk thereof at their respective places of business, or by depositing the same in the post office, directed to each of such banks, banking associations and individual bankers, or some officer thereof at their places of business respectively.

17 B., 332.

Reports, by whom and when to be made to comptroller.

It shall be the duty of every incorporated bank, banking association or individual banker in the state, on or before the first days of February, May, August and November of each year, to make and transmit to the comptroller a quarterly report, which report shall be made on the oath of the president and cashier, and shall contain a true statement of the condition of the bank, banking association or individual banker making such report, before the transaction of any business on the morning of the day specified in the notice of the comptroller, secretary of state and treasurer next preceding the date of such report, in respect to the following items and particulars, to wit:

Items to be reported.

Loans and discounts, over drafts due from banks, due from the directors of the bank, or banking association making the report, due from brokers, real estate, specie, cash items, stocks and promissory notes, bills of solvent banks, bills of suspended banks, loss and expense account, capital, circulation, (distinguishing that received from the comptroller from the old outstanding bills,) profits, amount due to banks, amount due to individuals and corporations other than banks, amount due to the treasurer of the state, amount due to commissioners of canal fund, amount due to depositors on demand, amount due not included under either of the above heads. And it shall be the duty of the comptroller to publish such reports together in the newspaper published in the city of Albany in this section before named, accompanied with a summary of the items of capital, circulation and deposits, specie and cash items, public securities and private securities; and the separate report of each bank, banking association and individual banker shall be published in a newspaper published in the county; if a newspaper is published in the city or town in which any bank is situated, such publication shall be had in such paper in which such bank or banking association, or the banking house of such individual banker shall be situated, at the expense of such bank, banking association or individual banker.

As amended by Laws of 1847, ch. 419.

Reports and summary when to be published.

§ 4. The comptroller shall publish the reports and summary required by the third section of this act, together in one paper, on or before the twenty-fifth day of August, November, February and May in each year, and the expense of such

publication shall be defrayed by a per centage assessed upon the capital stock of all the banks and banking associations, and individual bankers doing business under the "Act to authorize the business of banking," passed April 18, 1838, or of any act amending the same, in the state; and if any such bank, banking association or individual banker shall fail to furnish to the comptroller its quarterly report in time for such publication, it shall forfeit and pay to the comptroller the sum of one hundred dollars, to be applied by him to the payment of the expense of publishing the quarterly reports; and if any bank, banking association or individual banker shall neglect or refuse to make the quarterly report required by the third section of this act, for two successive quarters, it shall forfeit its charter (if an incorporated bank) and its privileges as a banking association or individual banker, if organized or doing business under the act of April 18, 1838, in this section before referred to, and every such bank, banking association and individual banker may be proceeded against and its affairs closed in any manner now required by law, in case of an insolvent bank or banking association.

As amended by Laws of 1847, ch. 419. •

§ 5. Whenever it shall appear from the reports made by any bank or in any other way, that the capital of any bank has become impaired and reduced, it shall be competent for the comptroller to call upon such bank to redeem its circulation while its capital continues so reduced, so that the circulation of such bank shall not exceed that to which its reduced capital would by law entitle it.

Provision
in case of
capital
being im-
paired.

§ 6. The office of bank commissioner is hereby abolished; provided however, that it shall be competent for the comptroller, whenever he shall have good and sufficient reason to suspect the condition of any bank, or the correctness of its quarterly report, to appoint a special agent to examine the affairs of such bank, and who for that purpose shall have the same powers now vested by law in a bank commissioner. And the expenses of such investigation, if such bank shall be proved to have made a false return or otherwise to have been guilty of a violation of law, shall be paid by said bank; but if it appear that such bank has violated no law, then the expenses of such examination shall be defrayed in the same manner as is herein provided for defraying the expenses of the publication of the quarterly reports.

Office of
bank com-
missioner
abolished.

§ 7. Any bank may at its pleasure, on paying its dues to the safety fund, and on depositing with the comptroller an amount of money equal to the whole amount which any such bank would be liable to pay to the safety fund during the time of its original charter, and all other debts and demands against it, wind up its affairs, distribute its assets among its stockholders, and resign its charter, and close its business, by a resolution passed at a meeting of the stockholders, and approved of by a majority of stockholders in interest of such

Provision
relative to
safety fund
dues.

PART I.

bank called for that purpose, a copy of which resolution shall be furnished to the comptroller, and shall also be published for three successive weeks in the state paper; and if any outstanding notes or other demands are not presented within one year, such bank may deposit with the comptroller or elsewhere under his direction, and subject to his order, on interest, a sum sufficient to meet such outstanding demands, which, when presented to the comptroller, shall be paid by him out of such sum, and such bank may distribute among its stockholders the surplus of its assets, and after six years from the day on which publication of dissolution was first made, the comptroller shall return to the stockholders, to be distributed, the remainder of any of the sum so deposited.

Repeal.

§ 8. All acts heretofore passed that conflict with the provisions of this act, are hereby repealed.

CHAP. 41.

AN ACT to amend the act passed April 18, 1838, entitled
"An act to authorize the business of banking."

PASSED March 16, 1844.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Comptrol-
ler may re-
ceive and
hold stocks.

§ 1. The comptroller is hereby authorized to receive and hold all stocks of the United States, already deposited in his office, as security for circulating notes issued, or that may be issued to any banking association or individual banker, on the security of said stocks, in the same manner and with like effect as if they were stocks of this state.

CHAP. 239.

AN ACT relative to receivers of banking corporations.

PASSED May 1, 1844.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Dividends
to be made.

§ 1. It shall be lawful for receivers of the property and effects of banking corporations from time to time to make dividends of the moneys in their hands among the creditors of such corporations, until the payment of such creditors in full; and no dividends shall be made to the stockholders of such corporations until after the final dividend to the creditors.

Under di-
rection of
chancellor.

§ 2. Such receivers shall be subject to the direction and control of the chancellor, as to the time of making dividends both to the creditors and stockholders of such corporations, and

as to the time of closing up the concerns of such corporations, and rendering their final account. But the receivers already appointed shall within four months from the passage of this act render their account, and close the concerns of such corporations, unless upon special application made to the chancellor, and for good cause shown, the time may be extended; but such extension shall not exceed one year, except as to assets, or property in suit or in court.

CHAP. 281.

AN ACT to amend the act passed May 14, 1840, entitled
 “An act to amend the act entitled an act to authorize the
 business of banking.”

PASSED May 6, 1844.

*The People of the State of New York, represented in Senate
 and Assembly, do enact as follows:*

§ 1. The third section of said act is hereby amended so as to read as follows:

No association of persons shall commence the business of banking under said act until such association shall have deposited with the comptroller the securities required by law to the amount of one hundred thousand dollars; and no individual banker or bankers shall commence the business of banking under said act or receive circulating notes under the same, until such individual banker or bankers shall have deposited with the comptroller the securities required by law to the amount of fifty thousand dollars.

Amount to
be deposit-
ed.

§ 2. Each and every individual banker now doing business under the general banking law of this state, or who shall before this law takes effect, have received circulating notes under said act, shall state in his quarterly reports, whether any person or persons, and who, are interested with such individual banker directly or indirectly, in the securities deposited with the comptroller for the circulating notes obtained by such individual banker, or in the business of circulating said notes, or the benefits or advantages thereof; and if it shall appear from such report that any other person is so interested with said banker, and in case two successive reports of said banker shall not contain such statement, or if he omit twice in succession to make such quarterly reports, such banker shall forfeit one thousand dollars for each and every omission to make such statement, or to file such reports as aforesaid, to be sued for and recovered by the attorney-general, in the name of and for the benefit of the people of this state.

Duty of in-
dividual
bankers.

§ 3. Every individual banker who shall heretofore have obtained circulating notes of the comptroller, under said act, shall within ninety days after this act takes effect, file in the comptroller's office a certificate, stating the town, city or vil-

To file a
certificate
stating
where he
resides.

PART I.

lage in which he resides ; and thereafter it shall not be lawful for such individual banker to transact business under said act in any other place than in which he resides, and in case of any change of residence of such individual banker, he shall forthwith file a notice thereof in the comptroller's office as aforesaid. Any person neglecting to comply with the requirements of this section or either of them, shall for each neglect forfeit one thousand dollars, to be sued for and recovered by the attorney-general in the name and for the benefit of the people of this state.

CHAP. 87.

AN ACT relative to purchasers at receivers' sales.

PASSED April 24, 1845.

The People of the State of New York, represented in Senate and Assembly, do enact as follows :

Purchasers
may prosecute.

§ 1. Any purchaser from the receiver of a banking corporation of any chose in action belonging to the assets of such corporation, may prosecute the same in his own name in all cases where by law the same could be prosecuted in the name of such receiver.

CHAP. 160.

AN ACT concerning the election of directors of banking associations.

PASSED April 29, 1847.

The People of the State of New York, represented in Senate and Assembly, do enact as follows :

Subject to
R. S.

§ 1. Every banking association which has been or shall hereafter be formed or organized, under the provisions of the act entitled "An act to authorize the business of banking," passed April 18, 1838, or of any act amending the same, shall be subject to the provisions of article two, title two, chapter eighteen, part one of the Revised Statutes.

CHAP. 419.

AN ACT to amend an act entitled an act to abolish the office of Bank Commissioner, and for other purposes, passed April 15, 1843.

PASSED December 7, 1847 ; three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows :

[Sections 1 and 2 amend sections 3 and 4 of Laws of 1843, chap. 218.]

Provision
in cases of
incorrect

§ 3. Whenever in the opinion of the comptroller, there shall be good cause to suspect that any bank, banking association

or individual banker has made an incorrect or imperfect quarterly return, or is in an unsound or unsafe condition to do banking business, it shall be his duty to have the books, papers and affairs of such bank, banking association or individual banker examined by some competent person to be designated by him, who shall examine fully into its books, papers and affairs forthwith, and report to the comptroller on oath, the result of such examination, a copy of which report shall be forthwith published in the manner prescribed in the first and second sections of this act in respect to the publication of quarterly returns. The reasonable costs and expenses of every such examination shall be defrayed in the manner prescribed in the second section of this act for paying the expenses of publishing quarterly returns.

§ 4. All individual bankers and all banking associations, which are now or shall be hereafter engaged in the business of banking under the provisions of the act entitled “an act to authorize the business of banking,” shall be subject to taxation on the full amount of actual capital paid in or secured to be paid in, as such capital, by them severally, at the actual market value of such securities to be estimated by the comptroller without any reduction for the debts of such individual banker or banking association. But in no case shall the capital of any such banking association or individual banker, be estimated at a less sum than the amount of circulating notes delivered to such banking association or individual banker and not returned to the comptroller, and in case the capital of such banking association has been reduced by the surrender of any securities to the stockholders thereof, and the certificates of stock held on account of such securities being surrendered to such banking association and canceled, such banking association shall not be subject to taxation upon such part of its capital.

Bankers
and associations
subject to tax-
ation.

[Section 5 repealed by chap. 452, Laws of 1847.]

CHAP. 340.

AN ACT amendatory of the act, entitled “An act authorizing the business of banking,” passed April 18, 1838, and the acts amending the same.

PASSED April 12, 1848.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. All banking associations, or individual bankers, organized under the provisions of the act passed April 18th, 1838, entitled “An act authorizing the business of banking,” and the several acts subsequently passed amendatory thereof, or which shall hereafter be organized, shall be banks of discount and deposit as well as of circulation, and the usual business

Banking
associa-
tions
and indi-
vidual
bankers to
be banks of
discount
and depo-
sit.

PART I.

of banking of said associations, or individual banker, shall be transacted at the place where such banking association, or individual banker, shall be located, agreeable to the location specified in the certificate directed to be made by the second clause of the sixteenth section of the act passed April 18th, 1838, herein before mentioned and not elsewhere, and every report directed to be made by any law of this state from such association or individual banker, shall be verified by the oath of the president and cashier of such association, or such individual banker, that the business of said association, or banker, has been transacted at such location. But nothing in this section shall be deemed to repeal or modify the provisions of the act passed 4th May, 1840, entitled "An act for the redemption of bank notes," as the same is applicable to all the banks, banking associations, or individual bankers of the state.

Securities
to be depo-
sited with
comp-
troller.

§ 2. The securities which banking associations, or individual bankers, hereafter to be organized under the provisions of the above recited act, passed April 18th, 1838, and the amendments thereto, shall deposit with the comptroller as security for the redemption of circulating notes issued to them by the said comptroller, shall be New York state stocks, in all cases to be or to be made to be equal to a stock producing six per cent per annum and it shall not be lawful for the comptroller to take such stocks at a rate above its par value or above its current market value: Or the securities shall not be less than one half in such stocks and one half in bonds and mortgages upon improved, productive, unincumbered lands in this state, exclusive of any buildings thereon, said mortgages bearing an interest of not less than seven per cent per annum and to an amount not exceeding two-fifths of the value of said lands.

Amount in
mortgages.

§ 3. No mortgage hereafter to be deposited as security as aforesaid, shall be for a greater amount than five thousand dollars each.

When, &c.,
to apply.

§ 4. The provisions of the first section of this act shall apply to the banking associations and individual bankers now organized as aforesaid, on and after the first day of June, eighteen hundred and forty-eight.

CHAP. 344.

AN ACT to regulate the issues of the safety fund banks, and for other purposes.

PASSED April 12, 1848.

The People of the State of New York, represented in Senate and Assembly, do enact as follows :

Amounts to
be issued.

§ 1. The several safety fund banks in this state incorporated by special act, having capital up to and including two

hundred thousand dollars, shall continue to issue and have in circulation notes or bills duly registered as required by law, to the amount now allowed by the act of the sixteenth of May, 1837, regulating the issues of safety fund banks, and those banks having capitals over two hundred thousand dollars, shall be allowed to issue and have in circulation notes or bills to the amount of their respective capitals, and no other or greater amount. But in all cases where a bank has a branch located at another place, that portion of the whole capital actually employed at each place of business, shall be taken and deemed the capital thereof under the provisions of this section.

§ 2. It shall be the duty of the comptroller at all times to cause to be printed from the plates in his custody, and deliver to each of said banks, such notes and of such denominations allowed by law, as the bank owning such plates may require, not exceeding, together with outstanding old circulation and with the notes previously received, the amount of circulation allowed to such banks by the first section of this act; and said notes, before being delivered to said banks, shall be countersigned and registered in the manner specified in the second section of the “Act to abolish the office of bank commissioner, and for other purposes,” passed April 18, 1843; and the expenses of preparing, countersigning and registering said notes, shall be paid to the comptroller by the banks receiving the same, in proportion to the number of notes received.

Comptroller to furnish notes to each bank.

§ 3. All acts and parts of acts heretofore passed, so far as the same are inconsistent with the provisions of this act, are hereby repealed.

Repeal.

§ 4. It shall be the duty of the comptroller to require in addition to the contributions now made to the safety fund of all banks asking for and receiving any bills or notes under and by the provisions of this act beyond what they are authorised to issue by the act of eighteen hundred and thirty-seven, ample security for the redemption of the same in specie, in accordance with article eight, section six of the constitution of this state.

Provision relative to safety fund.

CHAP. 97.

AN ACT to authorise the comptroller to issue registered notes in lieu of unregistered ones in certain cases.

PASSED March 12, 1849.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. Whenever any safety fund bank shall apply to the comptroller for circulating notes, in lieu of those reported to the comptroller as unregistered notes in circulation by such

Registered notes when to be issued.

PART I.

bank, on the first day of July, one thousand eight hundred and forty-three, and the comptroller shall be satisfied from the facts stated by the president and cashier of such bank, on oath, that such unregistered notes so reported as in circulation on the day aforesaid, have probably been lost or destroyed, he may issue to such bank, notes in lieu thereof to an equal amount of those so lost or destroyed, the same as though such unregistered circulating notes had been returned to the comptroller's office.

Stocks to
be deposit-
ed.

§ 2. It shall be the duty of the comptroller to require of all banks asking for and receiving circulating notes under the provisions of the first section of this act, to deposit in his office stocks of this state to be, or to be made to be, equal to a stock producing six per cent per annum, equal to the amount of the notes issued.

CHAP. 226.

AN ACT to enforce the responsibility of stockholders in certain banking corporations and associations, as prescribed by the constitution, and to provide for the prompt payments of demands against such corporations and associations.

PASSED April 5, 1849.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Liability of
stockhold-
ers for
debts con-
tracted af-
ter January,
1850.

§ 1. Whenever default shall be made in the payment of any debt or liability, contracted after the first day of January, one thousand eight hundred and fifty, by any corporation or joint stock association for banking purposes, issuing bank notes or any kind of paper credits to circulate as money, after the first day of January, one thousand eight hundred and fifty, the stockholders of such corporation or association shall be individually responsible, equally and ratably, such responsibility to be enforced as hereafter provided, and in no other manner, for the amount of such debt or liability, with interest, to the extent of their respective shares of stock in any such corporation or association, as hereinafter provided.

22 N. Y., 12; 18 N. Y., 207; 29 B., 369; 25 B., 416.

The term
stockholder
to whom to
apply.

§ 2. The term "stockholder," as used in this act, shall apply not only to such persons as appear by the books of the corporation or association to be such, but also to every equitable owner of stock, although the same may appear on such books in the name of another person; and also to every person who shall have advanced the installments or purchase money of any stock in the name of any person under twenty-one years of age, and while such person remains a minor, to the extent of such advance; and also to every guardian or

other trustee who shall voluntarily invest any trust funds in such stock; and no trust funds in the hands of such guardian or trustee shall be in any way liable under the provisions of this act, by reason of any such investment, nor shall the person for whose benefit any such investment may be made, be responsible in respect to such stock, until thirty days after the time when such persons, respectively, become competent and able to control and dispose of the same; but the guardian or other trustee making such investment as aforesaid, shall continue responsible as a stockholder until such responsibility devolves upon the person beneficially interested therein; and in respect to stock held by a guardian or other trustee, under a transfer of the same by a third person, or under positive directions by a third person for such investment, the person making such transfer, or giving such directions, and his executor and administrators, shall for the purposes of this act, be deemed a stockholder, and the estate of such person, if he be deceased, shall be responsible for the debts and liabilities chargeable on such stock according to the provisions of this act.

§ 3. The persons who shall be stockholders of any corporation or association described in the first section of this act, at the time of contracting any debt or liability by such corporation or association, shall be responsible therefor, as declared in the said first section, but shall be exonerated from such responsibility in respect to any stock which shall have been transferred, previous to any default in the payment of such debt or liability, on the books of such corporation or association, to any resident of this state, of full age, in good faith and without any intent to evade such responsibility; and every assignee of any stock so transferred previous to such default, shall be responsible for debts and liabilities to the extent of such stock, in the same manner as if he had been the owner at the time of contracting such debt or liability, with the same exception in his favor, in respect to any stock transferred by him as herein provided; and the same rule of responsibility shall apply to each subsequent assignee.

25 B., 416.

§ 4. A book shall be provided and kept by every corporation and association described in the first section of this act, in which shall be entered the names and residences of the stockholders in such corporation or association on the first day of January, one thousand eight hundred and fifty, and the names and residences of the original stockholders of every corporation or association organized after the day last mentioned, so far as the same are known to the officers of the bank; the number of shares held by each stockholder; every registered transfer of stock upon the books of the bank after the said last mentioned day; the names of the assignor and assignee, with their residences and the number of shares transferred. The said book shall be at all times, during the

Liability of stockholders described in the first section

Names and residences of stockholders to be kept in a book provided for that purpose.

PART I
Book to be
kept open
for inspec-
tion.

Penalty.

usual hours of transacting business, open to public inspection. And a refusal by any officer of such corporation or association to exhibit such book to any person demanding the inspection thereof, as herein provided, shall subject the said corporation or association to a penalty of fifty dollars for every such refusal. And every refusal by any such officer having once refused to exhibit such book as aforesaid, is hereby declared to be a misdemeanor, and the officer so offending, upon conviction thereof, shall be adjudged guilty of a misdemeanor, and be punished by a fine not exceeding one hundred dollars for every such subsequent refusal, or by imprisonment for a term not exceeding six months, or by both such fine and imprisonment. The said penalty may be sued for and recovered, with costs, by any person who will prosecute for the same; the one moiety thereof to be paid to such person, and the other moiety to be paid into the treasury of the state. In all proceedings under the provisions of this act, the said book shall be presumptive evidence of the truth of the contents thereof; but such presumption may be repelled by evidence by any party or person interested in repelling the same.

Thus amended by Laws of 1859, ch. 365.

After 20
days, plain-
tiff may be
entitled to
enter an
order or
rule for
judgment.

§ 5. After the expiration of twenty days from the service of any summons or complaint or declaration, or proceeding for the recovery of any demand against any corporation or association described in the first section of this act, upon any debt or liability exceeding one hundred dollars, contracted after the first day of January next, in which the precise sum demanded shall be stated, the plaintiff shall be entitled to enter an order or rule for judgment, upon filing such complaint or other proceeding with due proof of personal service thereof upon any officer of such corporation or association, and judgment shall be rendered thereon for such demand, with interest and costs, whether an answer to such complaint or other proceeding has been served or not, unless an order shall have been filed in the office of the clerk where such judgment might be entered, granted by a justice of the supreme court or county judge, that the entry of such judgment be stayed until the issue joined or to be joined by the parties be disposed of. But no such order shall be granted without proof by affidavit to the satisfaction of such judge that the defendant in such suit has a good defence on the merits to such demand, or some part thereof, arising upon facts set forth in such affidavits.

Corpora-
tion when
to be de-
clared dis-
solved.

§ 6. Upon the return of an execution against the property of any corporation or association described in the first section of this act unsatisfied in whole or in part, or upon proof satisfactory to any justice of the supreme court, that any such execution although not returned, cannot be satisfied out of any property of the defendant, he shall at once make an order declaring the insolvency of such corporation or association.

CHAP. XX.
Application
when to be
made for
such disso-
lution.

§ 7. Any creditor of any such corporation or association having a demand exceeding one hundred dollars arising upon a debt or liability contract after the first day of January next, the payment of which shall have been refused by such corporation or association, may, at any time after ten days from the time of such refusal, apply to a justice of the supreme court for an order declaring such corporation or association insolvent and for an injunction as hereinafter provided. If in the opinion of such judge, upon the facts presented, it be expedient in order to prevent fraud or injustice, he may grant an order for a temporary injunction, restraining such corporation or association, and its officers from paying out or in any way transferring or delivering to any person, any money or assets of such corporation or association, or incurring any debt or obligation, until such order be vacated or modified.

26 B., 305, 310.

§ 8. Upon a hearing of the parties on such short notice as the judge shall appoint, he shall determine whether such corporation or association be clearly solvent or otherwise, and may require the officers thereof to exhibit any and all of its books, papers, accounts, assets and effects, and to be examined on oath touching the same before him, or a referee to be appointed by him. If he determine that such corporation or association is clearly solvent, he shall notwithstanding continue the order for a temporary injunction if one has been granted, until the demand of the applicant be fully paid with his costs on such application; unless it shall have appeared by affidavit or otherwise that such corporation or association have a good defence on the merits to such demand.

Duty of
judge on
hearing of
parties.

§ 9. If the judge determine that such corporation or association is not clearly solvent, he shall make an order declaring the same insolvent and shall also by order restrain such corporation or association and its officers from exercising any of its corporate rights or any rights or privileges granted to it by law, and from collecting or receiving any debts or demands and from paying out or in any way transferring or delivering to any person any of its property, money or effects, until such order be vacated; and he shall immediately appoint a receiver of the property of such corporation or association.

When to
make an
order to re-
strain.

§ 10. Any one or more stockholders of any such corporation or association owning stock to the amount of one-tenth part of the capital thereof paid in, may at any time, in like manner apply to any justice of the supreme court for an order declaring such corporation or association insolvent, or in imminent danger of insolvency. And if on the facts verified by affidavit presented such justice shall deem it necessary or expedient in order to prevent fraud, undue preference or injustice to creditors, he may grant an order in the nature of a temporary injunction, as specified in the seventh section of this act; upon a hearing of the parties as soon as may be practicable, he may

One or
more stock-
holders
may apply
for an order
to declare
corporation
insolvent.

PART I.

require the exhibition to him, or to a referee to be appointed by him of all the books, papers, accounts, assets and effects of such corporation or association; and an examination of the officers, servants and agents thereof under oath; and if he determine that such corporation or association is not clearly solvent, or that it is in imminent danger of insolvency, he shall make an order declaring such determination, and shall by order restrain the said corporation or association and its officers, in the same manner as provided in the ninth section of this act, and shall also appoint a receiver of the property of such corporation or association.

Power and
duty of re-
ceivers.

§ 11. Every receiver appointed according to this act, after giving security, shall take into his possession all the property, effects, books, papers, accounts and demands against such corporation or association; including the securities, if any, which may have been deposited with the superintendent belonging to such corporation or association, excepting therefrom so much of the same as may be necessary to enable the superintendent of the banking department to pay and redeem the outstanding circulation of such corporation or association. He shall immediately give notice, by publication in such newspapers as the superintendent or any justice of the supreme court shall direct, requiring the creditors of such corporation or association to exhibit and establish their demands before him within thirty days from the time of his appointment. Such receiver shall possess all the powers of receivers of corporations under the third article of title four of chapter eight and part third of the Revised Statutes in respect to the settlement of all demands exhibited to them, and in all other respects, except as herein otherwise provided; and all such powers now conferred by law on trustees of insolvent debtors as may be applicable, and shall be subject to all the duties and obligations by law imposed on receivers of corporations except as herein modified.

Thus amended by Laws of 1855, ch. 69.

Securities
when to be
converted
into cash.

§ 12. Under the direction of the comptroller, all securities deposited with him belonging to such corporation or association, shall be converted into cash by the receiver, with the least possible delay, and the receiver shall also convert into cash the effects and demands of such corporation or association, and for that purpose may sell at auction any of the said demands which any justice of the supreme court shall authorise to be sold; and within ninety days from the time of his appointment, unless such time be enlarged by a justice of the supreme court, which may be done for a period not exceeding ninety days, such receiver shall declare a dividend of the cash in his hands among the creditors of such corporation or association.

Dividends
to be made.

Expenses
to be de-
ducted be-

§ 13. Before making such dividend, the receiver shall deduct and retain the sums necessary to defray the expenses of the proceedings, and all sums which he may have paid in order to

exonerate any property of such corporation or association from any pledge or specific lien or levy, under execution or attachment. He shall then apply the money in his hands to the payment of the bills or notes held by bill holders of such corporation or association, who shall have presented the same in just and equal proportions. If any surplus remain he shall divide and pay the same to and among the creditors of such corporation or association having demands founded on any debt or liability contracted after the first day of January one thousand eight hundred and fifty, whose demands shall have been ascertained, in proportion to their respective demands; and if any further surplus remain, he shall divide and pay the same to and among all other creditors of the said corporation or association whose demands shall have been ascertained, in proportion to their demands respectively. Such payments to creditors shall be made in the order prescribed by law, in respect to the duties of receivers of corporations.

§ 14. If there shall remain unsatisfied any debts or liabilities of such corporation or association, contracted after the first day of January, one thousand eight hundred and fifty, the receiver shall within thirty days after the declaration of the said first dividend, and without waiting for the actual payment of the sums divided, render to a justice of the supreme court residing in the district where the business of such corporation or association was conducted, a particular account of the said debts and liabilities so remaining unsatisfied, and a preliminary account of all his proceedings, under oath, in which shall be set forth the amount of cash realized by him, the expenses and allowances claimed by him, all payments that he may have made, the amount on hand to be divided, and the dividends declared by him.

Report to
be made in
relation to
unsatisfied
debts.

§ 15. The said receiver shall at the same time report and submit to such justice a true and accurate list and statement of the persons who, since the first day of January, one thousand eight hundred and fifty, were stockholders of such corporation or association, the nominal amount of stock held by each, and the residence of each stockholder, so far as the same can be ascertained. The said list and statement shall be made up from the stock books, ledger and list of stockholders kept by such corporation or association, and shall show when each stockholder acquired and transferred the stock standing in his name.

List of
stockhold-
ers to be re-
ported.

§ 15. The said justice shall thereupon refer the said report and list of stockholders to a referee, to be appointed by him, with directions, after giving notice to all persons concerned, to apportion the debts and liabilities of such corporation or association contracted after the first day of January, one thousand eight hundred and fifty, and remaining unsatisfied among the said stockholders, ratable in proportion to their stock, according to the principles in this act declared, and to

Report and
list to be
referred to
referee.

PART I.

Hearing
when to be
had before
the referee.

report his proceedings to such justice, or some other justice of the supreme court in the same district.

§ 17. The said referee shall cause notice of his appointment, and the time and place of hearing on the matters so referred to him, to be given to each stockholder whose name appears on the said list at least ten days before such time, which notice shall be served on such of the said stockholders as may then reside in the county where the principal office or place for conducting the business of such corporation or association was situated, either personally or by leaving a copy thereof at the residence of such stockholder, with some person of suitable age, and such notice may be served upon all other stockholders, by publishing the same in one advertisement, containing the names of all such last mentioned stockholders, for at least three weeks, in such newspapers as any justice of the supreme court may direct, and the same shall always be published in the paper designated by law for the publication of legal notices, and in a paper, if there be one, printed in the county where the chief office for conducting the business of such corporation or association was located.

Allegations
and proofs
of all parties
to be heard.

§ 18. On such hearing the said referee shall hear the allegations and proofs of all parties and persons interested in the matter referred, and particularly shall ascertain the persons who are chargeable as stockholders for the debts and liabilities contracted as aforesaid, and the amount chargeable to each according to the rules and principles declared in this act. At the first special term of the supreme court held in the county in which such receiver resides, or in an adjoining county, after the expiration of six weeks from the time of his appointment, such referee shall report to the justice holding such term, the apportionment of the debts and liabilities among the stockholders made by him in detail, with the proofs taken by him on such hearing. If, in the opinion of such justice, further time is requisite to enable the said referee to complete the apportionment directed, or to take further proof in reference to the same, he may grant such further time not exceeding ninety days.

Apportionment,
when to be reported
to supreme court.

§ 19. On the final completion of such apportionment, the same shall be reported at a special term of the supreme court, as hereinbefore directed, and on the coming in of any such report, the justice holding such term shall proceed to examine the same, and hear the allegations of the parties and persons interested, and may modify or amend the same, or may refer the same back to the same or another referee for further proof or examination, or may confirm the same. If there be a further reference, notice of hearing thereon may be given by a general notice published in the same newspapers in which the first notice appeared for two weeks, and a report shall be made thereon within the time, to be specified in the order of reference.

Report,
when to be

§ 20. When the report of a referee, made according to the

CHAP. XX,
filed in
clerk's
office.

preceding sections of this act, shall have been confirmed by a justice of the supreme court at any special term thereof, after being modified or amended by him, the same, together with the order of confirmation, shall be filed in the office of the clerk of such county as shall be directed by such justice; and unless an appeal be allowed and entered therefrom as hereinafter provided, the said order of confirmation shall be final as a judgment against each stockholder for the amount found chargeable against him; and one or more executions thereupon may be issued against any one or more of the stockholders named in such report or order, for the sum or sums chargeable against him or them, in the same manner and with the like effect as upon a judgment in the supreme court, at the instance of the receiver of such corporation or association, and the money collected on such execution shall be paid to and received by such receiver.

§ 21. The money so collected, after deducting all expenses of proceedings, shall be without delay divided, distributed and paid over to the creditors of such corporation or association, in the same manner as hereinbefore provided, in relation to the first dividend, by the said receiver.

Money to be
divided.

§ 22. The justice to whom any report by a receiver or by a referee, shall be made as herein provided, shall ascertain and allow the necessary expenses attending the execution of their duties, including the hire of such and so many clerks and such professional assistance as may appear to have been useful to expedite the business committed to them, and shall allow to them such reasonable compensation for their services, not exceeding the rate of five dollars for each day actually employed, as he shall deem proper, which allowances and expenses shall be deducted and defrayed out of the cash in the hands of the receiver before making dividends thereof.

Necessary
expenses to
be allowed.

§ 23. Neither the dividends herein directed to be made, nor the apportionment of the debts of such corporation or association among the stockholders thereof, shall be delayed or suspended by reason of the pendency of any litigation or controversy, for the recovery of any demand by or against such corporation or association, unless the same shall be expressly directed by a justice of the supreme court, residing in the district where the business of such corporation or association was conducted; and such delay shall in no case exceed one year, and if at the time of declaring any dividend, there shall be any prosecution pending in which any demand against such corporation or association may be established, the receiver may retain in his hands the proportion which would belong to such demand and the necessary costs and expenses of the suit or proceeding, to be applied according to the event of such prosecution, or to be distributed in some future dividend to creditors or among the stockholders.

Dividends
and appor-
tionments
not to be
delayed be-
yond one
year.

§ 24. If after paying and discharging the debts and liabilities of such corporation or association as herein provided, and

After pay-
ing debts,
remaining

PART I.
assets, how
disposed of.

defraying all the expenses of the proceedings, there shall remain or come to the hands of the receiver, any other assets or effects of such corporation or association the same shall be converted into cash as hereinbefore directed, and shall be paid to the stockholders upon whom any such debts or liabilities were apportioned in just and equal proportion to the sums contributed and paid by them.

Appeal, not
to suspend
or delay ex-
ecution
pursuant to
certain sec-
tions.

§ 25. No appeal from any determination or order of a justice of the supreme court, made pursuant to the fifth, sixth, seventh, eighth and ninth sections of this act, shall suspend or delay the execution of such order or the effect of such determination, unless there shall be filed with the notice of the appeal to the clerk of the court, a certificate of a justice of the supreme court, to the effect that there is probable error in such order or determination, nor unless security be given satisfactory to such justice for the payment of the demand upon which the proceedings in those sections may be founded whenever judgment shall be rendered therefor, with interest at the rate of ten per cent and costs.

Under sec-
tion ten.

§ 26. No appeal from any order or determination made pursuant to the tenth section of this act, shall suspend or delay the execution of such order or the effect of such determination, unless there be filed, together with the notice of appeal to the clerk of the court, a certificate in all respects corresponding with that required in the last preceding section, nor unless security be given satisfactory to the justice granting such certificate to indemnify the stockholders upon whose application such order or determination was made, against all damages, costs, expenses and losses by reason of any debt or liability of such corporation or association created after the first day of January, one thousand eight hundred and fifty.

No appeal
from an
order of
reference.

§ 27. No appeal can be made from any order of any justice of the supreme court under this act referring any matter to a referee.

Appeal may
be taken by
receiver,
&c.

§ 28. An appeal from the determination of a justice of the supreme court confirming the apportionment of the debts and liabilities of a corporation or association among the stockholders thereof, as provided by this act, may be taken by the receiver of such corporation or association, or by any one or more of the stockholders affected by such apportionment, in the same manner and with the like security as provided by law in the case of appeals from a special term of the supreme court to a general term, or from the judgment of such general term, to the court of appeals in the same manner and with the like security and effect as appeals to the same court from any other like judgment, except that it shall not be necessary for a receiver so applying to give any security for costs or otherwise.

New appor-
tionment,
when to be
made.

§ 29. If any such determination or judgment shall be reversed or modified so that a new apportionment of such debts and liabilities shall become necessary, the court in which

such reversal or modification shall be made, shall direct a new apportionment, and the matter shall be remitted to the proper justice of the supreme court for that purpose; and the same proceedings shall be had thereon to complete such new apportionment as are herein provided in relation to the original apportionment.

23 N. Y., 510.

§ 30. Every security taken under the provisions of this act shall be filed with such clerk of the supreme court, as the justice taking the same shall direct; and the same may be enforced by suit in the name and for the benefit of any person for whose benefit or indemnity the same was taken.

Securities,
where to be
filed.

§ 31. Any creditor of any such corporation or association who shall have neglected to present his demand to the receiver before the first or subsequent dividend, and who shall present the same before the second or any other subsequent dividend, shall receive the sum he would have been entitled to on any former dividend, before any distribution be made to other creditors.

Right of
creditors
who neglect
to present
their de-
mands.

§ 32. Every issue of fact or of law joined in any suit against any corporation or association, described in the first section of this act, upon any debt or liability contracted after the first day of January, one thousand eight hundred and fifty, or against any receiver of such corporation or association or by any such receiver under the provisions of this act, shall have preference at the court at which it shall be noticed for trial, or argument to all other causes; and every case made, special verdict rendered, bill of exceptions and demurrer to evidence taken on such trial, and every issue of law joined on the pleadings in any such suit and every appeal from any order or determination, judgment or decree made or rendered under the provisions of this act, and every special motion relating to any proceedings had under this act, shall have a preference in the hearing and argument thereof in any court where the same may be pending.

Certain is-
sues of fact
or law join-
ed in suit
to have pre-
ference.

CHAP. 313.

AN ACT amendatory of the act entitled "An act to authorise the business of banking," passed April 18, 1838, and the acts amending the same.

PASSED April 10, 1849.

The People of the State of New York. represented in Senate and Assembly, do enact as follows:

§ 1. The stocks which banking associations, or individual bankers now or hereafter to be organized under the provisions of the act "To authorise the business of banking," passed April 18, 1838, and the amendments thereto, shall hereafter

Stocks to be
deposited
with comp-
troller.

PART I.

deposit with the comptroller, shall be New York state stocks, in all cases to be or to be made to be equal to stock producing six per cent per annum, or at least one half the amount so deposited shall be in the stocks of the state of New York, as before mentioned, and not exceeding one half in stocks of the United States, in all cases to be or to be made to be equal to a stock producing an interest of six per cent per annum; and it shall not be lawful for the comptroller to take such stocks at a rate above their par value or above their current market value.

Comptrol-
ler, when to
issue circu-
lating notes
to associa-
tions.

§ 2. The shareholders or a majority of them in amount, who shall be owners of any incorporated bank continuing the business of banking until the expiration of their charter, and who shall have associated themselves for the purpose of banking, under the provisions of the "Act to authorise the business of banking," passed April 18, 1838, and the amendments thereto, shall be entitled to receive from the comptroller, who is hereby authorised to issue to the association so formed, circulating notes in amounts of not less than ten thousand dollars, upon the deposit of securities of the kind described, required by the provisions of the above mentioned act and the amendments thereto, to an amount equal to the circulating notes so issued. But if such banking association so formed shall not have deposited with the comptroller during the three years next following the date of their articles of association an amount equal to that now required by law of banking associations as security for circulating notes previous to commencing the business of banking, the comptroller is hereby empowered to retain the interest accruing upon securities so deposited until such association has complied with the provisions of the act above recited in relation to the amount of security to be deposited in the office of the comptroller.

Associa-
tions, how
formed
after expli-
ration of
charter.

§ 3. If the shareholders or a majority of them in amount, of any incorporated bank, within one year of the expiration of its charter shall file with the president thereof a notice in writing that they intend to avail themselves of the provisions of the second section of this act to associate for the purpose of banking, it shall be lawful for the directors of said bank to purchase and hold such stock and other securities as the comptroller is or may be authorised to receive for circulating notes under the provisions of the act to authorise the business of banking, passed April 18th, 1838, and the various acts amending the same, to such an amount as they shall deem for the interest of the shareholders thereof.

Provision
relative to
real estate.

§ 4. An association heretofore or hereafter formed to take the place of an incorporated bank whose charter has expired or is about expiring may, where all the stockholders of such incorporated bank have assented to its organization under the act to authorise the business of banking, take and hold in addition to such real estate as is prescribed by the twenty-

fourth section of the act to authorise the business of banking, such other real estate as at the time of the transfer of the property of the incorporated bank, having been received by it in payment of debts previously contracted to said bank or purchased by it under judgments, or decrees in chancery in favor of said incorporated bank, according to law.

CHAP. 437.

AN ACT to amend an act relative to unclaimed bank dividends and deposits, passed May 9, 1835, and for other purposes.

PASSED April 11, 1849.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. Every company or association now or hereafter incorporated or organized, or doing business under any general or special law of this state, on or before the first day of September next, and annually thereafter shall cause to be published for six successive weeks in one public newspaper printed in the county in which such company or association may be located, and in the state paper, a true and accurate statement verified by the oath of the cashier, treasurer or presiding officer, of all deposits made with said company or association, and of all dividends and interest declared and payable upon any of the stocks, bonds or other evidence of indebtedness of said company or association which at the date of such statement shall have remained unclaimed by any person or persons authorized to receive the same for two years then next preceding.

Statement
of unclaim-
ed divid-
ends to be
published.

§ 2. Such statement shall set forth the time that every such deposit was made, its amount, the name, and the residence if known of the person making it, the name of the person in whose favor the dividend or interest may have been declared, its amount and upon what number of shares and on what amount of stock, bonds or other evidence of indebtedness of any such company or association.

Statement,
how to be
made.

§ 3. The term "association" shall include every individual doing business alone, under any general or special law of this state.

Term asso-
ciation.

CHAP. 251.

AN ACT to amend the act entitled "An act to amend the act entitled an act to authorize the business of Banking," passed May 14, 1840.

PASSED April 10, 1850.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. The fourth section of the act entitled "an act to amend the act entitled an act to authorize the business of banking," passed May 14, 1840, is hereby amended so as to read as follows:

Notes to be payable on demand, and without interest.

§ 4. No banking association or individual banker as such shall issue or put in circulation any bill or note of said association or individual banker, unless the same shall be made payable on demand and without interest; except bills of exchange on foreign countries or places beyond the limits or the jurisdiction of the United States, which bills may be made payable at or within the customary usance or at or within ninety days' sight, and every violation of this section by any officer or member of a banking association or by any individual banker shall be deemed and adjudged a misdemeanor, punishable by fine or imprisonment, or both, in the discretion of the court having cognizance thereof.

CHAP. 331.

AN ACT to provide for the final distribution of the funds held by the comptroller belonging to the creditors of insolvent banks and bankers.

PASSED April 10, 1850.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Final distribution to be made.

§ 1. It shall be the duty of the comptroller to make a final distribution of the funds in his hands arising from the sale of securities deposited with him, under the act to authorise the business of banking by associations or individual bankers, which have failed, or may hereafter fail to redeem their circulating notes, which distribution shall be made in the manner herein prescribed. At the expiration of six years after the first sale made by the comptroller, of the securities of any such insolvent banking association or individual banker, the comptroller shall issue a final notice to the holders of the circulating notes issued by such banking association, or individual banker, requiring the presentation of such notes within six months after the date of said notice, and any of such

circulating notes which shall not be presented within the time thus specified, shall cease to be a charge or claim upon the funds of said banking association or individual banker remaining in the hands of the comptroller. Any of such circulating notes which shall be presented within the period above limited, shall be received and paid by the comptroller, at the same rate which shall have been paid on like notes previously presented, and if all the notes of any banking association or individual banker so presented shall have been redeemed at their par value, he shall pay to said association or banker the residue of the fund remaining in his hands belonging thereto. But in case said notes shall not have been redeemed at par, then the holder shall be entitled to a certificate showing the balance, if any, due thereon.

Final notice.

§ 2. At the expiration of the notice of six months required to be given, by the preceding section, the comptroller shall ascertain the amount of the residue of the fund remaining in his hands belonging to the creditors of such insolvent association or banker, and after deducting therefrom all expenses justly chargeable thereon, he shall make a pro rata distribution of the residue upon the outstanding certificates given for the balance due to the holders of the circulating notes of said association or banker, which shall have been redeemed in part, and it shall be the duty of the comptroller to issue a notice to the holders of such certificates stating the rate or amount payable thereon, and requiring said holders to present the same within six months after the date of said notice; and any of said certificates which shall not be presented within the time thus specified, shall cease to be a charge or claim upon the residuary fund in the hands of the comptroller.

Fund, how to be estimated and distributed.

§ 3. After making the final distribution directed in the last preceding section, if any portion of said fund shall remain unclaimed, the same shall be deposited in the treasury, and applied towards paying the ordinary expenses of the free banking department.

Unclaimed fund, how appropriated.

§ 4. The notice required to be given by this act to the creditors of insolvent banking associations or individual bankers, shall be published at least six weeks in one or more newspapers which the comptroller shall deem best calculated to inform such creditors, and the cost of such publication shall be defrayed out of the fund to which said notice shall refer.

Notice, how published.

CHAP. 164.

AN ACT to organize a Bank Department.

PASSED April 12, 1851; "three-fifths being present."

The People of the State of New York, represented in Senate and Assembly, do enact as follows :

§ 1. There is hereby established a separate and distinct department which shall be charged with the execution of the

Bank department.

PART I.

laws heretofore passed, or that may be hereafter passed in relation to the banks, which are subject to the act to create a fund for the benefit of the creditors of certain monied corporations, and for other purposes, passed April 2, 1829, or in relation to banking associations and individual bankers, formed or transacting business under the act to authorize the business of banking, passed April 18, 1838, and the several acts in addition to or amendatory thereof.

Superintendent.

Salary.

His deputy.

Oath of office.

Bond.

§ 2. The chief officer of the said department, shall be denominated the superintendent of the banking department. He shall be appointed by the governor, by and with the advice and consent of the senate, and shall hold his office for the term of three years. He shall receive an annual salary of five thousand dollars, to be paid quarterly, in the first instance out of the treasury on the warrant of the comptroller. He shall employ from time to time the necessary clerks to discharge such duties as he shall assign them, whose compensation shall be paid to them monthly on his certificate, and upon the warrant of the comptroller in the first instance out of the treasury; he shall appoint one of the said clerks to be his deputy, who shall possess the powers and perform the duties attached by law to the office of the principal during a vacancy in such office, and during the absence or inability of his principal. Within fifteen days from the time of notice of their appointments respectively, the superintendent and his deputy shall take and subscribe the oath of office prescribed by the constitution, and file the same in the office of the secretary of state, and the said officers shall be in all respects subject to the provisions of the sixth title of chapter five of the first part of the Revised Statutes, so far as the same may be applicable. And the said superintendent of the banking department shall give to the people of this state a bond in the penalty of fifty thousand dollars with two sureties to be approved by the comptroller and treasurer of this state, conditioned for the faithful discharge of the duties of his office, and the said superintendent shall not, either directly or indirectly, be interested in any bank or banking association, or as an individual banker.

As amended by Laws of 1857, ch. 103.

Powers of superintendent.

§ 3. The superintendent of the banking department shall possess all the powers, perform all the duties and be subject to all the obligations and penalties now conferred by law upon the comptroller of this state, or to which the comptroller is subject in relation to banks, incorporated and banking associations formed and bankers transacting business under the laws specified in the first section of this act, and the said laws and all acts amendatory thereof, or in addition thereto are hereby modified and amended, so that every power and duty thereby conferred on the comptroller, shall from and after the appointment of such superintendent, be transferred

to and conferred upon the said superintendent subject to the modifications contained in this act.

§ 4. The said superintendent with the approval of the governor, shall devise a seal with suitable inscriptions for his office, a description of which with a certificate of approval by the governor shall be filed in the office of the secretary of the state with an impression thereof, which shall thereupon be and become the seal of office of the superintendent of the banking department, and the same may be renewed whenever necessary. Every certificate, assignment, and conveyance executed by the said superintendent in pursuance of any authority conferred on him by law, and sealed with his seal of office shall be received in evidence, and may be recorded in the proper recording offices in the same manner, and with the like effect as a deed regularly acknowledged or proved before an officer authorized by law to take the proof or acknowledgment of deeds, and all copies of papers in the office of the said superintendent certified by him, and authenticated by the said seal, shall in all cases be evidence equally, and in like manner as the original. An impression of such seal directly on paper shall be as valid as if made on a wafer or wax.

§ 5. All plates for bank bills deposited with the comptroller, all papers for bills, all securities, stocks, bonds and mortgages and all other papers whatever in the comptroller's office relating to the business of the banking department, shall on demand be delivered and transferred to the superintendent thereof, and be and remain in his charge and custody.

Papers,
bills, &c.,
to be trans-
ferred to
superinten-
dent.

§ 6. There shall be assigned to the said superintendent by the trustees of the state hall, suitable rooms therein for conducting the business of the said department, and the said superintendent shall from time to time furnish the necessary furniture, stationery, fuel, lights, and other proper conveniences for the transaction of the said business; the expense of which shall be paid on the certificate of the superintendent, and the warrant of the comptroller in the first instance out of the treasury.

Rooms and
furniture.

§ 7. All the expenses incurred in and about the conducting the business of the said department, including the salary of said superintendent and his clerks, shall be defrayed and paid by the incorporated banks, banking associations, and bankers, in whose behalf they are incurred. The expenses incurred, and services performed, specially for any incorporated bank, banking association, or banker, including the delivery of new bank bills for such as may be returned, and the destruction of the latter shall be charged to such incorporated bank, banking associations or banker, and all other expenses of the said department, shall be charged to the said incorporated banks, banking associations and bankers, in such proportions as the said superintendent shall deem just and reasonable. If such charges are not paid after due notice, the superintendent may

Expenses,
how de-
frayed.

PART I

apply the dividends on any stock, or the interest on any bonds and mortgages in his hands deposited by the bank, banking association, or banker, so neglecting to make the payment of such charges with interest at the rate of seven per cent, and the moneys so received by the said superintendent on account of such charges, shall be deposited and paid by him into the treasury of this state, to reimburse all sums advanced from the treasury for such expenses; and in case of there being no stocks, bonds or mortgages in the bank department deposited by such bank, association or banker, then the said superintendent may maintain an action in his name of office against the delinquent bank, association or banks, for the recovery of such charges, and the sums collected therein shall be paid into the treasury, and neither the said superintendent nor any clerk or person employed in his office shall take or receive directly or indirectly, any compensation or pay for any services or extra services rendered in the banking department, other than the compensation allowed by law; and any person violating this provision, shall be deemed guilty of a misdemeanor.

Sec. 14 of
act of April
18, 1838.

§ 8. The provisions of the fourteenth section of the "Act to authorise the business of banking," passed April eighteenth, eighteen hundred and thirty-eight, are hereby extended to the said superintendent and the officers and clerks employed in the bank department.

Superinten-
dent to fix
day for re-
ports.

§ 9. Instead of the comptroller, secretary of state and treasurer, it shall be the duty of the superintendent of the bank department to fix upon and determine a day in respect to which the reports of incorporated banks, banking associations and individual bankers shall be made, as provided in chapter four hundred and nineteen of the Session Laws of one thousand eight hundred and forty-seven; and the said superintendent shall, at least once in each quarter of a year, fix and designate some Saturday in each preceding quarter in respect to which the said reports shall be made, and shall give notice thereof in the manner prescribed in the said chapter four hundred and nineteen; and the said reports shall be made to the said superintendent as directed in the said chapter, and all willful false swearing in respect to such reports shall be deemed perjury, and subject to the punishments prescribed by law for that offence. In case of neglect to make such report within fifteen days from the mailing of the notice designating said day upon which such report shall be made, it shall be the duty of the superintendent to cause the books, papers and affairs of the bank, association or banker, so neglecting, to be examined as directed by the third section of the said chapter four hundred and nineteen; and the reasonable expenses of such examination, to be certified by the said superintendent, shall be charged to the bank, association or banker so neglecting, and shall be collected in the manner herein prescribed in respect to other charges against them; and it shall also be

the duty of the superintendent, in case of the failure or neglect of any bank, banking association or individual banker to make said report within the time above mentioned, to prosecute the same in any court of record, and recover the sum of one hundred dollars for such neglect or refusal; and the money so recovered shall be paid into the treasury of this state, to be used for the purpose of defraying the miscellaneous expenses of the bank department.

As amended by Laws of 1857, ch. 189.

§ 10. The provisions of the second section of the act chapter three hundred and forty of the laws of eighteen hundred and forty-eight, amending the "Act authorising the business of banking," shall extend and be applicable to banking associations and individual bankers organized before the passage of the said chapter three hundred and forty, as well as to those organized subsequently; but no one mortgage of lands shall hereafter be received as security for circulating bills to an amount greater than five thousand dollars; and any mortgage heretofore received or hereafter received for circulating bills, may be held by the superintendent of the banking department for the full nominal amount thereof notwithstanding a less amount of bills may have been or shall be delivered upon the deposit of such mortgage, and the whole nominal amount of such mortgage may be collected by any purchaser thereof in case it shall be necessary to sell such mortgage at its nominal amount to meet the liabilities of the banking association or banker by whom it was deposited; but the same may be sold as for the amount of bills delivered upon its deposit when there is no deficiency of other means to meet the said liabilities.

Mortgages,
how to be
held.

§ 11. It shall be the duty of the superintendent of the banking department to report annually to the legislature, at the commencement of its first session:

Annual re-
port.

1. A summary of the state and condition of every incorporated bank, banking association and individual banker, from whom reports have been received the preceding year, at the several dates to which such reports refer, with an abstract of the whole amount of banking capital returned by them, of the whole amount of their debts and liabilities, specifying particularly the amount of circulating notes outstanding, and the total amount of means and resources, specifying the amount of specie held by them at the times of their several returns, and such other information in relation to said banks, associations and bankers, as in his judgment may be useful:

2. A statement of the banking associations and bankers whose business has been closed during the year, with the amount of their circulation redeemed and the rate of such redemption per cent. and the amount outstanding:

3. To suggest any amendment to the laws relative to banking by which the system may be improved and the security of bill-holders and depositors may be increased:

PART I.

4. To report the names and compensation of the clerks employed by him, and the whole amount of the expenses of the department during the year, and the amount if any for which the treasury shall be in advance: such report shall be made by or before the last day of the year, and the usual number of copies for the use of the legislature, and two hundred and fifty copies for the use of the department shall be printed in readiness for distribution on the meeting of the legislature, by the printer employed to print legislative documents, the expense of which shall be charged among the general expenses of the department, and collected as herein provided.

CHAP. 203.

AN ACT to amend the several acts relating to Incorporated Banks, Banking Associations and Individual Bankers.

PASSED April 17, 1851.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. Section one of the act relating to the redemption of bank notes, passed May 4th, 1840, is hereby amended so as to read as follows:

Offices of
redemption

§ 1. Every moneyed incorporation in this state having banking powers, and issuing bills or notes of circulation, and every banking association and individual banker, carrying on banking business under the act to authorize the business of banking, except those whose place of business is in the cities of New York, Albany, Brooklyn or Troy, shall, on before the first day of July next, appoint an agent, who shall keep an office in the city of New York, Albany, or Troy, for the redemption of all circulating notes issued by said corporation, banking association, or individual banker, which shall be presented to such agent for payment or redemption.

§ 2. Section four of the said act is hereby amended so as to read as follows:

Rate of dis-
count.

§ 4. It shall be the duty of every such corporation, banking association and individual banker out of the cities of New York, Albany, Brooklyn and Troy, to redeem and pay on demand all circulating notes issued by such corporation, banking association or individual banker presented for redemption or payment at the office of their said agent, in the city of New York, Albany or Troy, at a rate of discount not exceeding one-quarter of one per cent.

Demand
and protest
for non-pay-
ment.

§ 3. Whenever any action shall be brought against any incorporated bank, banking association, or individual banker, for the recovery of the amount due on any circulating note or notes registered in the comptroller's office, the payment of which shall have been demanded at the banking house, or

usual place of business of the defendant, if it shall appear on the trial, or otherwise, to the court in which such suit is brought, that at the time such demand of payment was made, the defendant offered in payment the circulating note or notes issued by any bank association or banker, other than the defendant, which were at the time at par in the city of New York, Albany, or Troy, or a draft or drafts on any bank association or banker in the city of New York, Albany or Troy, or either of the same, for the amount of the circulating note or notes so presented, with an affidavit, if required, that such draft or drafts is or are available to their full amount, to insure the immediate payment thereof on presentation, or in case any action shall be commenced upon such note or notes before the expiration of fifteen days from the time of the first demand thereof, as above mentioned; and provided such bank, association or individual banker shall be ready and prepared to redeem such note or notes in the lawful money of the United States, at the counter or ordinary place of business of such bank, association or banker, at the expiration of said fifteen days from the time of the first demand thereof, with interest, then in either case, the plaintiff in such action shall not recover any costs, fees, or disbursements whatever against the defendants, and shall be entitled to recover no more than seven per cent interest, in lieu of all damages for the non-payment of the said circulating note or notes; but no interest shall be recovered upon such note or notes in any action, unless the plaintiff or holder thereof shall have again presented the same for payment, at the banking house or ordinary place of business of such defendant, on or after the fifteenth day after such first demand, and before the twentieth day, and the defendant shall have neglected and refused to pay the same with interest to that time, as aforesaid. And if such bank, association, or banker, at the time of the first presentation of said circulating note or notes, shall have offered to pay current bank notes or drafts, or both, or either, in the manner above provided, and shall at the time of the second presentation, pay or tender the amount of such note or notes thus demanded, in the lawful money of the United States, at their banking house or ordinary place of business, then such bank, association, or banker shall not be deemed to have suspended or refused specie payment, within the meaning of any statutes authorizing proceedings for the dissolution of the charter of such bank, or authorizing proceedings to restrain or enjoin the ordinary business of such bank, association, or banker, nor shall such bank, association, or banker, in such case, be liable to any other or greater damages for the non-payment of such circulating note or notes, than as above provided, any provision in the charter of any bank, or any other statute to the contrary notwithstanding.

§ 4. The fourth section of chapter two hundred and sixty of the laws of eighteen hundred and thirty-eight as amended

Notes, how
protested.

PART I.

by the first section of chapter forty-six of the laws of eighteen hundred and forty-one, is hereby further amended so that it shall read as follows: In case the maker or makers of any such circulating note or notes, countersigned and registered as aforesaid, shall at any time hereafter, on lawful demand during the usual hours of business, between the hours of ten and three o'clock, at the place where such note or notes is or are payable, fail or refuse to redeem such note or notes in the lawful money of the United States, the holder of such note or notes making such demand, may cause the same to be protested, in one package, for non-payment, by a notary public, under his seal of office, in the usual manner, unless the president, cashier or teller of such bank shall offer to waive demand and notice of the protest, and shall in pursuance of such offer, make, sign and deliver to the party making such demand, an admission in writing, stating the time of the demand, the amount demanded, and the facts of the non-payment thereof, and the comptroller, on receiving and filing in his office such admission or protest, together with such note or notes, shall forthwith give notice in writing to the maker or makers of such note or notes, to pay the same; and if he or they shall omit to do so for fifteen days after such notice, the comptroller shall immediately thereupon (unless he shall be satisfied that there is good and legal defence against the payment of such note or notes) give notice in the state paper, that all the circulating notes issued by such person or association will be redeemed out of the trust funds in his hands for that purpose, and the comptroller shall be required to apply the said trust funds belonging to the maker or makers of such notes, to the payment pro rata, of all the circulating notes put in circulation by the maker or makers of such dishonored notes, pursuant to the provisions of this act, and adopt such measures for the payment of such notes, as will in his opinion most effectually prevent loss to the holders thereof.

§ 5. The twenty-ninth section of said chapter two hundred and sixty of the laws of eighteen hundred and thirty-eight, is hereby amended so as to read as follows:

Damages
for non-
payment.

§ 29. Such association or individual banker shall be liable to pay the holder of every bill or note put in circulation as money, the payment of which shall have been demanded and refused, at the banking house or usual place of business of such association or banker, damages for non-payment thereof in lieu of interest at and after the rate of seven per cent. per annum, from the time of such refusal until the payment of such evidence of debt and damages thereon.

Proviso.

§ 6. Nothing contained in the third, fourth and fifth sections of this act, shall apply to cases where circulating notes registered in the comptroller's office, shall be presented for payment to the agent of any incorporated bank, banking association, or individual banker, appointed according to the provisions of chapter two hundred and two of the laws of eighteen

hundred and forty, entitled "An act relating to the redemption of bank notes," nor to any bank, banking association, or individual banker, for whom there shall not be at the time an agent duly appointed as prescribed in the said act; nor to banks, associations, or individual bankers, whose place of business is in either of the cities of New York, Albany, Brooklyn, or Troy.

CHAP. 223.

AN ACT to amend an act entitled "An act concerning foreign bank notes."

PASSED April 13, 1853

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. Section two of the act entitled "An act concerning foreign bank notes," passed May 7, 1839, is hereby amended so as to read as follows: It shall not be lawful for any incorporated banking institution within this state, or any association or any individual or individuals, authorized to carry on the business of banking by virtue of the act entitled "An act to authorize the business of banking," directly or indirectly, on any pretence whatever, to procure or receive, or to offer to receive, from any corporation, association, person or persons whomsoever, any bank bill, or note or other evidence of debt in the similitude of a bank note, issued or purporting to have been issued by any corporation, association or individual situated or residing without this state, at a greater rate of discount than is or shall be at the time fixed by law for the redemption of the bills of the banks of this state at their agencies; nor shall it be lawful for any banking institution, association, individual or individuals, in the first part of this section mentioned, to issue, utter or circulate as money, or in any way, directly or indirectly, to aid or assist in the issuing, uttering or circulating as money, within this state, of any such bank bill, note or other evidence of debt, issued or purporting to have been issued by any corporation, association or individual situate or residing without this state, or to procure or receive in any manner whatever any such bank bill, note or evidence of debt, with intent to issue, utter or circulate, or with intent to aid or assist in issuing, uttering or circulating, the same as money within this state; but nothing in this act contained shall be construed to prohibit any bank or banking institution receiving and paying out such foreign bank bills as they shall receive at par in the ordinary course of their business; and nothing in this section contained shall prohibit the said banking institutions, associations and individual bankers, in the first part of this section mentioned, nor shall they be prohibited, from receiving foreign notes from

Amendment of act.

Saving clause.

PART I.

their dealers and customers in the regular and usual course of their business, at a rate of discount not exceeding that which is or shall be at the time fixed by law for the redemption of the bills of the banks of this state at their agencies, or from obtaining from the corporations, associations or individuals, by which or by whom such foreign notes were made, the payment or redemption thereof.

Rates of
discount.

§ 2. It shall not be lawful for any person within this state to issue, utter or circulate as money, or in any way, directly or indirectly, to aid or assist in the issuing, uttering or circulating as money, within this state, of any bank bill, note or other evidence of debt in the similitude of a bank bill or note, issued or purporting to have been issued by any corporation, association or individual situated or residing without this state, which shall have been received by such person at a greater rate of discount than is or shall be at the time fixed by law for the redemption of the bills of the banks of this state at their agencies, or to procure or receive, in any manner whatsoever, or to offer to receive, any such bank bill, note or evidence of debt, at a greater rate of discount than is or for the time shall be fixed by law for the redemption of the banks of this state at their agencies, with intent to issue, utter or circulate, or with intent to aid or assist in issuing, uttering or circulating, the same as money within this state; but nothing in this section contained shall prohibit any person not authorized to carry on the business of banking within this state, nor shall any such person be prohibited, from receiving foreign notes in the regular and usual course of business, or from obtaining from the corporations, associations or individuals by which or by whom such foreign notes were made, the payment or redemption thereof.

Saving
clause.

18 N. Y., 243; 15 N. Y., 9; 14 N. Y., 162.

Penalties.

§ 3. The penalties provided in section four of the act hereby amended shall apply to any violation of this act.

CHAP. 250.

AN ACT relating to incorporated banks, banking associations, and individual bankers, located and doing business in the city of New York.

PASSED April 15, 1853.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Reports or
statements.

§ 1. In addition to the quarterly reports now required by law to be made to the superintendent of the banking department, by incorporated banks, banking associations, or individual bankers in this state, every incorporated bank, banking association or individual banker, located and doing business

in the city of New York, shall publish or cause to be published on the morning of every Tuesday, in a newspaper printed in said city, to be designated by the superintendent, a statement, under the oath of the president or cashier, showing the condition of the bank, banking association or individual banker making such statement, on the morning of each day of the week next preceding the date of such statement, in respect to the following items and particulars, to wit: average amount of loans and discounts, specie, deposits and circulation.

§ 2. Such statement shall be published at the expense of the bank, banking association or individual banker making the same; and if any bank, banking association or individual banker shall refuse or neglect to make the statement required in the first section of this act for two successive Tuesdays, it shall forfeit its charter (if an incorporated bank), and its privileges as a banking association or individual banker; and every such bank, banking association or individual banker may be proceeded against, and its affairs closed, in any manner now required by law in case of an insolvent bank or banking association. The terms "banking association" and "individual banker," as used in this act, shall be deemed to apply only to such banking associations and individual bankers as are or may be organized under the "act of April 18, 1838," and the several amendments thereto.

Forfeiture.

CHAP. 138.

AN ACT for the withdrawal of the circulating bills of incorporated banks, whose charters have expired or may hereafter expire.

PASSED April 3, 1854.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. The circulating notes issued by any incorporated bank, whose charter has expired or shall hereafter expire, shall be withdrawn from circulation by the trustees or legal representatives thereof, and returned to the superintendent of the bank department, to be destroyed, as follows:

Notes to be returned and destroyed.

The notes of banks whose charters have already expired, one-third part of its circulating notes in one year, one other third part within two years, and the remaining one-third part within three years from the time this act shall take effect.

And the circulating notes of all banks whose charters shall hereafter expire, as follows:

One-third part in one year, one other one-third part thereof in two years, and the remaining one-third in three years from the time their charters shall respectively expire.

But this section shall not prevent any person, individual banker or banking association from presenting to the trustees

Proviso.

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or legal representative of such expired incorporated bank such circulating notes for payment at any time. And nothing contained in this act shall in any manner affect or impair the duties, liabilities or obligations of the trustees, directors or stockholders of such expired incorporated banks, or the rights or remedies of any of the holders of such circulating notes.

Notes not
to be re-
issued.

§ 2. Every banking association transformed from an incorporated bank, and the officers and agents of every such association, and the trustees and agents of all such expired incorporated banks, shall be prohibited from issuing, paying out, or in any way directly or indirectly, circulating the notes of any incorporated bank whose charter has expired, or shall hereafter expire, after the time limited by the first section of this act for its withdrawal from circulation. And every such association, officer, agent or trustee that shall offend against any of the provisions of this act, shall be liable to the penalties prescribed by law for issuing bills or promissory notes, for the purpose of putting them into circulation as money, without being authorized by law.

Security for
notes not
returned.

§ 3. And in case of any failure to return such circulating notes to the superintendent of the bank department to be destroyed, as provided for in the first section of this act, the said trustees or legal representative of such expired incorporated bank shall deposit with such superintendent an amount in cash, which shall be equal to the circulating notes required to be returned as aforesaid, to be held as security until the said circulating notes are returned to said superintendent to be destroyed, except as to the last one-third part of said circulating notes, for which no deposit of money shall be required. But said last one-third part of said circulating notes shall be withdrawn from circulation and destroyed, as far as practicable, as provided for in the first section of this act.

And if any trustee or legal representative of such expired bank shall neglect or refuse to comply with the provisions of this act, it shall be the duty of such superintendent to proceed to wind up the affairs of such expired bank in the same manner as if it were an insolvent corporation.

CHAP. 185.

AN ACT directing the copies and certificates of association of banks to be transferred from the secretary's office to the banking department.

PASSED April 10, 1854.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. All copies of certificates of association under and, by virtue of the general free banking law and the acts amendatory thereof, filed in the office of the secretary of state, shall

be transferred to the banking department; and hereafter all copies of certificates of association, formed pursuant to such laws, shall be filed in the office of the superintendent of the banking department, who shall furnish, on payment of the same fees now chargeable in the secretary's office, all certificates in relation thereto as if the same had been originally filed in his office. All the powers conferred upon or duties required by any law of this state to be performed by the secretary of state, in relation to banking associations, shall hereafter be performed by the superintendent of the banking department.

CHAP. 242.

AN ACT amendatory of the act entitled "An act authorizing the business of banking," passed April 18, 1838, and the acts amending the same.

PASSED April 15, 1854.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. The person designated by the superintendent of the bank department, under the existing laws, to examine the books, papers and affairs of any bank, banking association or individual banker, shall take and file in the office of the clerk of the county where he resides, the oath of office prescribed in the constitution, and he shall have authority to examine on oath any individual banker, and the officers, agents, partners and clerks of such banker, and of any bank or banking association, touching the matters which he shall be directed to inquire into; and any willful false swearing in any such examination shall be perjury. And when directed by said superintendent, such person shall inquire whether any banker transacts the business of banking at the city, town or village where the circulating notes of such individual banker purport to have been issued and dated; and whether any bank or banking association transacts the business of banking at the place designated in its charter or certificate of association; and whether such banking business is conducted in the manner prescribed by law.

Examining agent.

§ 2. Such person shall have power to summon, in writing under his hand, any inhabitant of the county in which he may be conducting the inquiry to appear before him and testify in relation to the same. If the party so summoned shall refuse or neglect to appear at the time and place specified in such summons, or having appeared shall refuse to be sworn, or shall refuse to answer any pertinent and legal question, he shall forfeit the sum of one hundred dollars, to be sued for and recovered, with costs, by the superintendent of the bank department, in his name of office, and to be paid.

May summon any person to testify before him.

PART I.

into the treasury, to defray the general expenses of the bank department; and upon such neglect or refusal being duly proved by the person conducting such inquiry, before any justice of the supreme court, if such justice be satisfied that the party so neglecting or refusing ought to be examined touching the matters of such inquiry, he shall by warrant commit such party to the jail of the county, there to remain in close custody until he shall submit to appear, or testify or answer, as the case may require.

Unsound
banks and
banking.

§ 3. If it shall appear from such examination and report that any bank, banking association or individual banker is in an unsound or unsafe condition to do banking business or that the business of banking is not transacted by such bank, association or banker at the place where said circulating notes are dated and purport to be issued, or is not transacted in the manner prescribed by law, it shall be the duty of the superintendent to withhold and refuse to issue or deliver any registered notes to such bank, association or banker, and to retain the interest on all securities held in trust for such bank, association or banker until such time as he shall be satisfied that such bank, association or banker is in a sound and safe condition to do a banking business, and that the business of banking is transacted by such bank, association or banker at the place where their circulating notes are dated and purport to be issued.

Publica-
tion of re-
port.

§ 4. Whenever the superintendent shall deem it proper, a copy of any such report shall be published in the state paper, and in at least two daily newspapers in the city of New York. The reasonable costs and expenses of every such examination and publication shall be paid by the bank, association or banker whose affairs are examined, in the manner provided in the "Act to organize a bank department."

Certificate
to be filed
by indivi-
dual bank-
ers.

§ 5. The second and third sections of chapter two hundred and eighty-one of the Laws of eighteen hundred and forty-four are hereby extended and declared to be applicable to every individual banker who is now doing business or shall hereafter do business under the general banking laws of this state, or who has received or hereafter shall receive circulating notes under the said laws; and the certificate required by the third section of the said act shall be filed by every individual banker now doing business as aforesaid, and who has not already filed the same, within sixty days after this act shall take effect, and by every individual banker who shall hereafter desire to obtain circulating notes under the general banking laws of this state, previous to the delivery of any such notes to him. In case of a notice being filed with the superintendent of the bank department, of any change of residence of any individual banker, and of the place of doing his business, the superintendent shall publish a notice thereof in the state paper, and in such other newspapers as he shall direct, at the expense of such banker.

CHAP. XX.
Persons
jointly inte-
rested to be
jointly lia-
ble.

§ 6. When it shall appear by the return of any individual banker, or by the report of any person designated by the superintendent of the bank department, that any person is interested with such individual banker, directly or indirectly, in the securities deposited by him for the purpose of obtaining circulating notes, or in the business of circulating such notes, or in the benefits and advantages thereof, the said superintendent shall withhold all interest and dividends on the securities deposited with him by such banker, and all circulating notes from him, until such banker shall have filed in the bank department a certificate signed by every person so returned or reported as interested as aforesaid, and acknowledged by him in the manner prescribed by law to entitle deeds of land to be recorded, stating that such person is interested with such individual banker in the circulating notes obtained or to be obtained by him, and in the benefits and advantages of circulating the same, which certificate shall be evidence in all courts and places that the person so signing and acknowledging the same is a general partner with the said original banker in the business of banking, and as such is liable with him individually for all the debts and obligations created or made by such individual banker in the said business.

§ 7. In the publication of the abstracts of the quarterly returns of individual bankers, the superintendent of the bank department shall arrange them in a separate class, and shall specify the name and place of business of each, and the names and residence of the general partners. Abstracts.

§ 8. The circulating notes delivered to individual bankers shall express only the individual liability of the banker issuing them, and shall be signed by him only, and not by any attorney or agent; and any banker or person acting as his attorney or agent, who shall violate any provision of this section, shall be liable to a penalty of one hundred dollars for each offence, to be recovered in the name of the people of this state, with costs, and to be paid into the treasury to defray the general expenses of the bank department. Notes, how
signed.

§ 9. It shall not be lawful for any individual banker, having circulating notes obtained under the general banking laws of this state, to sell or transfer the business of banking, upon the securities deposited by him, to any person or persons; and until such business shall be closed by the return of the circulating notes issued, and the delivery of the securities deposited, the same shall be conducted only in the name of the individual banker by whom the said securities were deposited, and he shall continue individually liable for the payment of all circulating notes delivered to him. Sale of
banking
business
forbidden.

CHAP. 103.

AN ACT to amend the act to organise a bank department, passed April twelfth, eighteen hundred and fifty-one, and prescribing the powers and duties of the superintendent.

PASSED March 14, 1857; three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

[Section 1 amends Laws of 1851, ch. 164, § 2.]

Transfers
of stocks
and mort-
gages.

Duty of
treasurer.

§ 2. No transfer of stocks or mortgages now held or hereafter received by the superintendent of the banking department, as security for circulating notes issued for the same by him, shall be deemed valid or of binding force or effect, unless the same be countersigned by the treasurer of the state, or in his absence from his office or inability to perform the duties of his office, by his deputy. It shall be the duty of the treasurer aforesaid to keep in his office, or in the office of the superintendent of the banking department, a book, in which shall be entered the name of every bank, banking association or individual banker, from whose account such transfer of securities is made by the superintendent, and the name of the party to whom such transfer is made, unless such transfer shall be made in blank, in which case the fact shall be stated in said book, and the par value of any stock so transferred, shall be entered therein, and the amount for which every mortgage transferred is held by the superintendent, and the name of the party to whom assigned shall also be therein entered; and it shall be the duty of the treasurer, immediately upon countersigning and entering the same, to advise by mail the bank, banking association or individual banker, from whose account such transfer was made, of the kind of security and the amount of the same thus transferred.

Report of
treasurer.

§ 3. The treasurer shall present, in his annual report to the legislature, the total amount of such transfers or assignments countersigned by him.

Treasurer
and deputy
to counter-
sign, trans-
fer, &c.

§ 4. It shall be the duty of the treasurer, or in his absence from his office, or in case of his inability to perform the duties of his office, of his deputy, to countersign and enter upon the book in the manner aforesaid, every transfer or assignment of any securities held by the said superintendent, presented for his signature; and the treasurer shall have, at all times during office hours, access to the books of the superintendent of the banking department, for the purpose of ascertaining the correctness of the transfer or assignment presented to him to countersign, and the superintendent shall have access to the book above mentioned, kept by the treasurer, during office hours, to ascertain the correctness of the entries upon the same.

§ 5. The treasurer shall, for the services required by this act, receive the annual salary of one thousand dollars, to be paid in the same manner as the salary of the superintendent, and the same shall be charged in the general expenses of the bank department.

CHAP. XX.
Salary of
treasurer.

CHAP. 189.

AN ACT in relation to banks, banking associations, individual bankers, and the bank department.

PASSED March 28, 1857.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. Whenever a banking association shall lawfully, by virtue of its articles of association or other proper authority, make any change in any of the particulars required to be stated in the certificate of association, the change shall not be of any force or validity until a certificate thereof, executed by the president and cashier, under the corporate seal of the association, shall have been recorded and a copy filed, in the same manner as the certificate of association is by law required to be recorded and filed.

In case of
change.

Certificates
to be re-
corded and
filed.

§ 2. It shall be the duty of either the president or cashier of every bank and banking association, and of every individual banker, having securities deposited in the office of the superintendent of the banking department of this state, once or more during each fiscal year, and at such time or times during the ordinary business hours as said officer, banking association or banker may select, to examine and compare such securities with the books of said department, and if found correct, to execute to the superintendent a receipt, setting forth in the same the different kinds and the amounts thereof, and that the same are in the possession and custody of the superintendent at the date of such receipt. In case of the inability of an individual banker to make such examination, he shall make the same through an authorised agent appointed by him in writing, whose receipt shall have the same force and validity as if executed by him in person. If any bank, banking association or individual banker, shall refuse or neglect to make such examination during the fiscal year aforesaid, the comptroller, secretary of state, and the superintendent of the banking department, shall appoint some suitable and discreet person as agent for such bank, banking association or individual banker who shall have neglected or refused to make the aforesaid examination; and such agent shall make such examination, and if the securities so held by the superintendent shall be found to agree with the books of the department, shall execute the receipt before mentioned,

Duty of pre-
sident or
cashier.

Authorized
agents.

In case of
refusal.

Comptrol-
ler, &c., to
appoint
agent.

Duty.

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and the same shall be of like force or validity as if executed by the president or cashier of the bank, banking association, or the individual banker, or by an agent by him appointed; and it shall be the duty of such bank, banking association or individual banker, to pay on demand to such person so appointed, and making such examination and executing a receipt as aforesaid, such compensation therefor as the superintendent shall certify to be just and reasonable.

[Section 3, amends Laws of 1851, ch. 164, § 9.]

Notes to be
burned.

Agent to
witness
burning,
&c.

Refusal to
appoint
agent.

§ 4. Whenever any circulating notes of any bank, banking association or individual banker, shall be returned to the bank department for destruction and burning, it shall be the duty of such bank, banking association or individual banker, or the trustees or officers thereof, to procure the attendance of an agent to witness the counting, destruction and burning of such circulating notes, at the bank department, and sign a certificate thereof. In case the individual banker, or the trustees or offices of any bank or banking association returning circulating notes to the bank department for destruction and burning, shall refuse or neglect to appoint or procure the attendance of an agent to witness the counting and burning thereof within ten days after the receipt of the bills at the bank department, it shall be the duty of the superintendent to select and appoint some indifferent person, who shall, as the agent of such bank, banking association, banker or trustee, witness and certify the counting and burning thereof; and it shall be the duty of such bank, banking association, banker or trustee, forthwith to pay on demand to such person so appointed, witnessing and certifying as aforesaid, such compensation therefor as the superintendent shall certify to be just and reasonable.

Bank note
plates.

§ 5. That it shall be the duty of the superintendent of the banking department, and he is hereby authorised and directed, to destroy or cause to be destroyed, all bank note plates in his custody, of banks, banking associations or individual bankers, which have failed or given notice of closing of their business; and also all bank note plates in his custody that are not used, and any impressions which may be on hand made therefrom; and hereafter, whenever any bank, banking association or individual banker shall fail, or discontinue the business of banking, it shall be the duty of the said superintendent to destroy, or cause to be destroyed, all plates and impressions belonging to such bank, banking association or individual banker, and include in his next annual report a statement of the plates so destroyed.

Issuing of
circulating
notes.

§ 6. It shall not be lawful for the superintendent of the banking department to issue circulating notes to any individual hereafter commencing the business of banking under chapter two hundred and sixty of the laws of eighteen hundred and thirty-eight, and the various amendments thereto, designating such individual as a bank, unless as an addition

to his own proper name, and the word "bank" is added thereto on such circulating notes; and in case such individual shall have partners in the business of banking at the time of commencing the same, such fact shall be shown by the words, "and company," to be added to his own proper name, upon every note issued to him or them from the banking department.

§ 7. Section nine of chapter two hundred and forty-two of the laws of eighteen hundred and fifty-four, shall not be so construed as to prohibit an individual banker from selling his business of banking, upon the securities deposited by him, with all the privileges thereof, to any person who, previous to the passage of said act of eighteen hundred and fifty-four, was the partner in good faith, of such banker, in the business of banking aforesaid; neither shall it be so construed as to prohibit an individual banker from bequeathing his business of banking, upon the securities deposited by him, to any person or persons; nor shall it be so construed as to prohibit the business from being continued after his death by his legatee or heir at law.

Selling or
bequeath-
ing busi-
ness of
banking.

19 N. Y., 40.

§ 8. The superintendent of the banking department is hereby directed to pay into the treasury of the state, the sum of three hundred and sixty dollars and thirteen cents, now standing to the credit of the City Trust and Banking Company, the North American Bank, and the Farmers' Bank of Orange County; and the further sum of five hundred and seventy dollars and seventy-six cents, now standing to the credit of the Manufacturers' Bank of Ulster, and the Farmers' Bank of Malone, to be applied to the current expenses of the bank department.

Moners to
be paid into
treasury.

§ 9. The superintendent of the banking department is hereby authorised to compromise, sell or dispose of, at public or private sale, as he may deem most for the interest of the bank fund, all or any portion of the assets of the City Bank of Buffalo, belonging to the bank fund, and pay the amount realized therefrom to the treasurer on account of the bank fund.

Assets of
city bank of
Buffalo.

§ 10. The terms "banking association," and "individual banker," as used in this act, shall be deemed to apply only to such banking associations and individual bankers as are or may be organized under the act of April eighteen, eighteen hundred and thirty-eight, and the several amendments thereto.

Application
of terms.

§ 11. All acts or parts of acts, so far as the same are inconsistent with the provisions of this act, are hereby repealed.

CHAP. 370.

AN ACT to provide for the final closing of incorporated banks, continuing the business of banking until the expiration of their charters.

PASSED April 13, 1857.

[For this act see Laws of 1859, ch. 236.]

CHAP. 804.

AN ACT to amend the laws relative to Banking, and to prevent the improper retention of the notes of country banks.

PASSED April 30, 1857.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Redemp-
tion of
notes.

§ 1. It shall be optional with every incorporated bank, banking association or individual banker, doing the business of banking under any statute of this state, and receiving after this act takes effect, on deposit, in the course of its or his business, or otherwise, the circulating notes issued by any other incorporated bank, banking association or individual banker engaged in the business of banking under any such statute, to present such notes for redemption and payment in the manner and upon the terms now provided by law, either to the lawful redeeming agents or at the counters of the incorporated banks, banking associations or individual bankers issuing them; but every such incorporated bank, banking association and individual banker shall elect to present, and shall present such notes and all of them, it or he, may have on hand at the time of such presentation, either to the lawful agents, or at the counters of the banks, banking associations or individual bankers issuing them, for redemption and payment, in the manner provided by law, as often at least as once in each successive week, when more than the sum of ten thousand dollars are held by said incorporated banks, banking association or individual banker.

Notices of
election.

§ 2. If either of such banks, banking associations or bankers holding such circulating notes, shall elect to present the same for redemption and payment at the counters of the banks, banking associations or bankers issuing them, it, or he, shall cause a written or printed notice of such election, attested by the signature of the president or cashier of the bank, banking association or banker, so holding them, under the seal of such bank, banking association, or banker, that it or he will thereafter seal and present such notes and all of them, that it or

he shall have on hand at the time of such sealing, at the counter of the bank, banking association or banker issuing them, for redemption and payment, as often at least as once in each successive week, when more than the sum of ten thousand dollars are held by said incorporated banks, banking association or individual banker, to be redeemed and paid in the manner required by law; and when such notice shall have been given, such notes so received by such banks, banking associations and bankers aforesaid giving such notice, shall thereafter be presented at such counters, and not elsewhere, for redemption and payment, unless a further notice of ten days shall be given in the manner above provided, that such notes will thereafter be presented for redemption and payment to the lawful redeeming agent aforesaid, within the times and upon the terms prescribed by law; but nothing herein contained shall be construed to prohibit banks, banking associations and individual bankers from redeeming, presenting, holding, pledging or exchanging each others circulating notes in the manner, within the times and upon such terms as they may agree upon, or may heretofore have agreed upon, and as shall be conformable to pre-existing laws.

§ 3. Every incorporated bank, banking association and individual banker who shall knowingly and wilfully neglect or refuse to comply with the provisions of this act, shall forfeit and pay the sum of one thousand dollars, to be sued for and recovered in the name of the people of the state of New York, in any court having competent jurisdiction.

Penalty for violation.

CHAP. 132.

AN ACT to restrain Banks, Banking Institutions and Individual Bankers from assuming the title of Savings Banks or receiving deposits as such.

PASSED April 9th, 1858.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. It shall not be lawful for any bank, banking association or individual banker, authorized to issue circulating notes, by the laws of this state, established in any city or village where a chartered savings bank is located and transacting business, to advertise or put forth a sign as a savings bank, or in any way to solicit or receive deposits as a savings bank, and any bank, banking association or individual banker, which shall offend against these provisions shall forfeit and pay for every such offence the sum of one hundred dollars for every day such offence shall be continued, to be sued for and recovered in the name of the people of this state, by the district attorneys of the several counties in any court having cogni-

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zance thereof, for the use of the poor, chargeable to said county in which such offence shall be committed.

CHAP. 236.

AN ACT in relation to the Bank Department.

PASSED April 11, 1859.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Certain
sections
amended.

§ 1. Sections eight and nine of chapter three hundred and nineteen, being an act to amend the act entitled "An act to authorize the business of banking," passed May twenty-sixth, eighteen hundred and forty-one, and chapter sixty-eight, being an act to amend the act entitled "An act to authorize the business of banking," passed May twenty-sixth, eighteen hundred and forty-one, which act was passed on the 29th of March, eighteen hundred and fifty-one, and chapter three hundred and seventy, entitled "An act to provide for the final closing of incorporated banks, continuing the business of banking until the expiration of their charters," passed April thirteenth, eighteen hundred and fifty-seven, are hereby amended so as to read as follows:

Notice of
intention
to close
bank, &c.

1. Whenever any banking association, individual banker, receiver of a banking association, assignee or assignees of an individual banker, shall have given notice to the superintendent of their intention to close the business of banking, or the trustees or legal representatives of any incorporated bank whose charter has expired, or the receiver of any incorporated bank, which shall have been declared insolvent, shall have redeemed at least ninety per cent of their circulating notes, outstanding at the date of such notice, expiration of charter or declaration of insolvency, they shall be entitled to deposit with the superintendent, and he is hereby authorized to receive, a deposit of money equal to the amount of the outstanding circulation at the time of such deposit, to be placed by him in some bank in the city of Albany, in good credit, upon the receipt of which it shall be lawful for the superintendent to give up all other securities theretofore deposited with him for the redemption of circulating notes issued thereon.

Upon re-
ceipt of de-
posit, &c.

2. Upon the receipt of such deposit the superintendent shall immediately give notice in the state paper, and at least one newspaper in the county where such bank, banking association or banker shall have been located or doing business, which notice shall be published at least once a week for six months successively, that the notes of such bank, banking association or banker will be redeemed by him, at the bank where such deposit is made, at par; and that all the outstanding circulating notes of such bank, banking association or

banker must be so presented for redemption within six years from the date of such notice, and all notes which shall not be thus presented for redemption and payment within the time specified in such notice, shall cease to be a charge upon the funds in the hands of the superintendent for that purpose.

3. At the expiration of such notice, it shall be lawful for the superintendent to surrender, and such bank, banking association, banker, receiver, assignees or trustees, or their legal representatives, shall be entitled to receive from him all the money remaining in his hands after such redemption, except so much thereof as may be necessary to pay the reasonable expenses chargeable against the said accounts, including the payment for the publication of the above mentioned notices.

Superintendent to surrender, &c.

4. All circulating notes of such bank, banking association or banker, which shall not have been presented for payment within the period required by such notice, shall, upon the expiration of such period, cease to be a lien or charge upon the property and effects of such bank, banking association or banker, in the hands of such receivers, assignees, trustees or otherwise; and all liability of such receivers, assignees, trustees, banks, banking associations or bankers, for or on account of any circulating notes, which shall not have been presented within the time aforesaid, shall also cease.

Circulating notes.

5. Said trustees, receiver, assignees, bank, banking association or banker, may, after the full payment of all the circulating notes issued by them respectively, which shall have been presented within the time required by such notice, and of all other lawful claims and demands against such bank, banking association or banker, divide the remaining property and effects of said bank, banking association or banker among the stockholders thereof, their or his personal representatives or assigns, according to their respective shares or interest therein.

Surplus to be divided.

§ 2. The superintendent of the banking department is hereby directed to pay into the treasury of the state all balances of money remaining in his hands unclaimed for six years from the date of such deposit, to be applied to the current expenses of the bank department.

Balance to be paid into treasury.

§ 3. Any legal notice that shall be served upon the superintendent of the banking department, in relation to any mortgage of which he is the assignee, shall specify the name of the mortgagor and the description of the premises, as shown by the mortgage covering them, and the name of the party by whom it was assigned to him; and unless such notice shall contain the provisions hereinbefore mentioned, a non-compliance with the terms of such notice on the part of the superintendent shall not invalidate or lessen the security conveyed by such mortgage, or in any manner affect his lien upon the mortgaged premises conveyed under it.

Legal notice, how served.

§ 4. It shall be the duty of every public officer into whose hands shall come any counterfeit bank note plate, or other

Duty of every public officer.

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device for counterfeiting bank notes, or any counterfeit or spurious bank notes, immediately after using them when necessary in evidence against the parties implicated, to surrender the same to the superintendent of the banking department to be destroyed under his supervision, and it shall be the duty of the superintendent to destroy all such plates, devices or notes thus surrendered to him, in the same manner as he is now authorized to do in the case of banks whose charters have expired or have become insolvent, and to report the same to the legislature in his annual report.

CHAP. 277.

AN ACT to provide for the reduction of the capital stock of banking associations.

PASSED April 13, 1859.

The People of the State of New York, represented in Senate and Assembly, do enact as follows :

Association
may reduce
capital
stock.

§ 1. It shall be lawful for a banking association, now or hereafter to be organized, under the general banking laws of this state, to reduce its capital stock to an amount which shall be equal to the value of the property and effects of such banking association, above and beyond all its debts and liabilities, and thenceforth the capital stock of such association shall be such reduced amount, and the par value of the shares thereof shall be reduced in the same proportion ; but in no case shall such capital stock be reduced below one hundred thousand dollars, the amount now required by law for a banking association.

Notice to
superinten-
dent.

§ 2. Whenever a banking association shall propose to reduce its capital stock, according to the provisions of the first section of this act, due notice thereof shall be given to the superintendent of the banking department, signed by a majority of its board of directors, and accompanied by the written assent to such reduction, of at least two-thirds in amount of the shareholders of such association. It shall be the duty of the said superintendent, upon the receipt and filing of such notice, and within a reasonable time thereafter, to make or cause to be made an examination of its books, property, effects and liabilities ; upon which examination the officers thereof may be examined on oath as to the debts, liabilities, property and effects thereof. From the result of such examination the said superintendent shall determine the value, in his judgment, of such property and effects, above and beyond the debts and liabilities aforesaid, and certify the same in writing, and the amount so determined and certified, shall be thereafter the capital stock of such banking association, and the par value of the shares thereof shall be proportionably reduced.

Superinten-
dent to ex-
amine
assets.

Determine
amount of
capital
stock.

§ 3. The expense of the examination herein provided for, by the superintendent of the banking department, or caused to be made by him, shall be paid by the banking association for whose benefit the application shall be made.

CHAP. XX
Expense to
be paid by
banker.

§ 4. The determination and certificate in writing, to be made by the said superintendent, of the amount to which the capital stock of any banking association has been reduced under this act, shall be recorded in the office of the clerk of the county in which such banking association shall be located, and a certified copy thereof filed in the bank department of the state of New York, and the same shall be published by the said superintendent once a week for six weeks successively, in the state paper, and at least one newspaper in the county where such association shall be located, at the expense of the banking association applying for such reduction of its capital stock.

Certificate
to be re-
corded.

Notice to be
published.

§ 5. Nothing in this act contained shall in any way change or lessen the liability of the stockholders of any banking association reducing its capital stock under its provisions, to the bill holders or other creditors thereof, or any indebtedness or engagement now existing or that may so exist, either absolutely or contingently, against such association, prior to or at the time when such reduction shall take place, or by which the rights, remedies or security of the then existing creditors shall be weakened or impaired.

Securities
not to be
impaired.

CHAP. 62.

AN ACT to authorize the incorporated banks of the state to take and hold any stock of the United States or of the state of New York.

PASSED March 27, 1862.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. That it shall and may be lawful for any bank incorporated by any act of the legislature of the state of New York, or any banking association, or individual bankers to take and to become the owner of any stock of the United States or of the state of New York.

§ 2. That so much of the several acts incorporating such banks or authorizing the business of banking and the acts amendatory thereof as is inconsistent with the foregoing section be and the same is hereby repealed.

CHAP. 422.

AN ACT to provide for the consolidation of banking associations.

PASSED April 22, 1862; three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Authority.

§ 1. Any two or more banking associations, organized under the general banking laws of this state, and located in the same city, village or town, are hereby authorized to consolidate the same into a single association, to be located in the same place in the manner following:

Proceed-
ings to con-
solidate.

§ 2. The directors of the said associations may enter into an agreement under their respective corporate seals, for the union or consolidation of the said associations, prescribing the terms and conditions thereof, the mode of carrying the same into effect, the name and duration of the new association, the number of directors, the names of the persons to constitute the first board of directors, the time and place of holding the first election of directors, the manner of converting the shares of each of said associations into the shares of the new association, with such other details and provisions as they may deem expedient, not inconsistent with the provisions of the act to authorize the business of banking, and the acts amendatory thereof. Notice of the intention to consolidate said associations shall be given personally or by mail to each stockholder of each of said associations, at least ten days previous to entering into said agreement.

Consent of
stockhold-
ers.

§ 3. The written consent of stockholders, owning at least two-thirds in amount of the capital stock of each of said associations, shall be requisite to the validity of said agreement. Upon the presentation to the superintendent of the banking department, of the said agreement duly proved or acknowledged, together with satisfactory proof, by affidavit or otherwise, of the assent thereto of stockholders owning two-thirds in amount of the capital stock of each of said associations so proposing to consolidate, and of the service of notice upon each stockholder as aforesaid, the said superintendent shall, within a reasonable time thereafter, make or cause to be made an examination of the books, property, effects and liabilities of such associations; upon which examination the officers thereof may be examined on oath as to the debts, liabilities, property and effects of said associations respectively. From the result of such examination the said superintendent shall determine the value, in his judgment, of such property and effects above and beyond the debts and liabilities aforesaid, and certify the same in writing, and the amount so determined and certified shall be thereafter the capital stock of such consolidated banking association.

Superinten-
dent to
determine
value.

CHAP. XX.
Expense.

§ 4. The expense of the examination herein provided for by the superintendent of the banking department, or caused to be made by him, shall be paid by the banking associations for whose benefit the application shall be made.

Certificate
in writing
to be re-
corded.Filed in
bank de-
partment.

§ 5. The determination and certificate in writing to be made by the said superintendent of the amount at which the capital stock of any banking association has been fixed under this act, shall be recorded in the office of the clerk of the county in which such banking association shall be located; and a certified copy thereof filed in the bank department of the State of New York; and the same shall be published by the said superintendent once a week for six weeks successively, in the state paper, and at least one newspaper in the county where such association shall be located, at the expense of the said banking association.

Consoli-
dated asso-
ciation.

§ 6. Upon the recording of the said agreement and certificate, the said consolidated associations shall be and become a single banking association, in accordance with the said agreement and certificate, with the same franchise, rights, powers and privileges, and subject to the same duties, conditions and limitations, as the several constituent associations; and such consolidated association shall be vested with all the estate, property, credits and effects of the constituent associations, without deed or other transfer, and shall be liable for all their contracts, debts, obligations and liabilities; and the separate existence and operation of such constituent associations shall thereupon cease and determine.

Saving
clause as to
pending
suits.

§ 7. No action or other proceeding pending before any court or tribunal, in which either of the constituent associations may be a party, shall be deemed to have abated or been discontinued by reason of their consolidation; but the same may be prosecuted to final judgment and execution in the same manner as if this act had not been passed, or the said new association, by order of the court in which such proceedings may be pending, may be substituted as a party in place of either of the original associations, in any stage of such proceedings.

Liability
not changed

§ 8. Nothing in this act contained shall in any way change or lessen the liability of the stockholders, of any banking associations consolidating their capital stock under its provisions, to the bill holders or other creditors therefor; or any indebtedness or engagement now existing or that may so exist, either absolutely or contingently, against such association prior to or at the time when such consolidation shall take place; or by which the rights, remedies or security of the then existing creditors shall be weakened or impaired.

Dissent of
any stock-
holder.

§ 9. If any stockholder in either of the associations availing itself of the provisions of this act, who shall not have assented to such consolidation, shall, within twenty days after the agreement and certificate hereinbefore mentioned shall be recorded in the clerk's office of the county in which such associations are located, object in writing to said consolidation,

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and demand payment for his stock, such consolidated association shall within three months from the filing of such dissent, pay to the dissenting stockholder the value of his stock, as determined in the certificate of the superintendent of the banking department aforesaid; and upon payment so made by the said association, the interest of said stockholder in the property and effects of said association shall cease, and the said stock may be held and disposed of by the said association for its own benefit.

CHAP. 347.

AN ACT in relation to savings banks.

PASSED May 6, 1839.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Unclaimed
dividends
and depo-
sits to be
reported.

§ 1. The report and publication of the statement of unclaimed dividends and deposits, and of the names, residence and occupation of the depositors required to be made by the several savings banks in this state, by an act passed May 9th, 1835, shall only be in relation to such dividends and deposits, no part of which or of the interest accruing thereon, shall have been claimed or drawn out within three years next preceding the date of such statement; and such statement shall also be made annually to the comptroller of this state, on or before the first day of January in each year.

[Section 2 provides for an inspection by the Bank Commissioners.]

Surplus
fund.

§ 3. The board of trustees of the said savings banks are hereby authorized to accumulate gradually and hold invested in like securities, as authorized by the act incorporating said banks, a surplus fund not exceeding ten per cent on the amount of deposits in said banks respectively, to the end that in case of a reduction in the market price of the securities or public stocks, held or to be held by the said banks, or any of them, below the par value thereof, any loss to the depositors by reason of such reduction may be prevented or made good to them by means of said surplus fund.

CHAP. 478.

AN ACT in relation to deposits by banks for savings.

PASSED December 15, 1847.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Deposits.

§ 1. It shall be lawful for the trustees of banks for savings, who are authorized to make temporary deposits in any of the incorporated banks, to make such deposits with any

of the associations which are now, or may hereafter be formed under the general banking law.

CHAP. 91.

AN ACT for the protection of savings banks and institutions receiving deposits from married women.

PASSED March 25, 1850.

The People of the State of New York, represented in Senate and Assembly, do enact as follows :

§ 1. When any deposit shall be made in any savings bank or institution, by any female, being or hereafter becoming a married woman, in her own name, it shall be lawful for the trustees or officers of such bank or institution to pay such depositor such sum or sums as may be due such female, and the receipt or acquittance of such depositor shall be a sufficient legal discharge to the said corporation therefor.

Deposits by married women may be paid to them.

§ 2. If any trustee of any savings bank or institution shall fail to attend the regular meetings of the board of trustees thereof, or to perform the duties devolving on him as a member of said board for the term of six successive months, without excuse satisfactory to the board, he may be removed from the office as such trustee at the pleasure of the board.

Trustee failing to attend meeting may be removed.

CHAP. 72.

AN ACT to authorize savings banks or institutions for savings to deposit surplus funds in trust companies.

PASSED March 21, 1854.

The People of the State of New York, represented in Senate and Assembly, do enact as follows :

§ 1. It shall be lawful for any savings bank or institution for savings to make temporary deposits in any trust company incorporated under the laws of this state and authorized by the snpreme court to receive and hold trust funds and subject to examination by said court.

CHAP. 336.

AN ACT to regulate the distribution of the assets of Savings Banks or Institutions for Savings, by receivers thereof.

PASSED April 12, 1855; three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows :

§ 1. The receiver or receivers of any savings bank or institution for savings, now or hereafter appointed in pursuance

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of section forty-one of article two of title four of chapter eight of the third part of the Revised Statutes, shall, after having complied with all the provisions of said title from the section aforesaid to and including section seventy-eight of said title, distribute the residue of the moneys in their hands among all the creditors of said savings bank or institution for savings, whose debts shall have been ascertained from an examination of the books of account which shall have been kept by such savings bank or institution for savings or otherwise, in the order prescribed by section seventy-nine of said title, whether such creditors shall then have exhibited their claims or not.

CHAP. 136.**AN ACT in relation to Savings Banks.**

PASSED March 20, 1857; three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

To make
yearly re-
port.

§ 1. The several savings banks or institutions for savings now incorporated, or which may hereafter be incorporated, shall, on or before the twenty-fifth day of January, and on or before the twenty-fifth day of July, in each year, make a report in writing to the superintendent of the bank department, of the condition of such savings bank or institution for savings, on the first days of January and July; which report shall be verified by the oath of the two principal officers thereof; and shall state therein the total amount due to depositors; the total amount of assets of every kind; the principal sum of each and every bond and mortgage, with the estimated value of the property on which it is based; the amount invested in stock, designating each particular kind of stock, and the estimated market value of the same; the amount loaned upon the security of stock, with a description of all stocks so held; the amount, if any, loaned on personal securities; the amount invested in real estate; the amount of cash on hand, or on deposit in bank, with the names of the banks where deposited, and the amount placed in each; and the amount loaned or deposited in any other manner than herein described. The report of January in each year, shall, in addition, also state the number of open accounts; the amount deposited, and the amount withdrawn; also, the amount of interest received, and the amount placed to the credit of depositors during the year preceding the date of such report. Any wilful false swearing in respect to such reports, shall be deemed perjury, and subject to the punishments prescribed by law for that offence. And if any savings bank or institution for savings, shall fail to furnish to the superintendent of the banking department, its report at the

False
swearing.

Failure to
report.

times herein stated, it shall forfeit the sum of one hundred dollars per day for every day such report shall be so delayed; and the said superintendent may maintain an action in his name of office to recover such penalty, and when collected, the same shall be paid into the treasury of the state.

§ 2. It shall be the duty of the superintendent of the bank department, on or before the twentieth day of February in each year, to communicate to the legislature a statement of the condition of every savings bank and institution for savings from which reports have been received for the preceding year; and to suggest any amendments in the laws relative to savings banks or institutions for savings, which in his judgment may be necessary or proper to increase the security of depositors.

Duty of superintendent.

§ 3. Whenever any savings bank or institution for savings shall fail to make a report in compliance with this act, or whenever the superintendent of the banking department shall have reason to believe that any savings bank or institution for savings is loaning or investing money in violation of its charter or of law, or conducting business in an unsafe manner, it shall be his duty, either in person, or by one or more competent persons by him appointed, to examine their affairs; and whenever it shall appear to the superintendent, from such examination, that any savings bank or institution for savings has been guilty of a violation of its charter or of law, he shall communicate the fact to the attorney general, whose duty it shall then become to institute such proceedings against said savings bank or institution for savings, as are now authorised in the case of insolvent corporations. The expense of any such examinations shall be paid by the savings bank or institution for savings so examined, in such amount as the superintendent of the banking department shall certify to be just and reasonable.

Superintendent to examine affairs of banks.

Expense of examinations.

§ 4. No savings bank shall hereafter be required to make an annual report to the legislature, any provisions in their charter to the contrary notwithstanding.

Reports to legislature.

§ 5. The superintendent of the banking department is hereby authorised to employ from time to time so many clerks as may be necessary to discharge the duties hereby imposed; the salary of said clerks shall be paid to them monthly, on his certificate, and upon the warrant of the comptroller, out of the treasury; and it shall be the duty of the said superintendent, in his annual report to the legislature, to state the names of the clerks so employed, and the compensation allowed to them severally.

Clerks.

Salaries.

Names.

§ 6. It shall be the duty of the superintendent to collect all the expenses incurred in the performance of the duty hereby imposed, including the salaries of the clerks, and such expenses shall be defrayed and paid by the savings banks and institutions for savings, in proportion to the amount of deposits held by them severally, and when collected, the same

In case of refusal to pay proper charges.

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shall be paid into the treasury of the state. If any savings bank or institution for savings shall, after due notice, refuse or neglect to pay its proper share of said charges so allotted, then the said superintendent may maintain an action in his name of office against such savings bank or institution for savings, for the recovery of such charges.

CHAP. 336.

AN ACT concerning Marine Insurance in the State of New York.

PASSED May 1, 1829.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Rev. Stat.
extended.

§ 1. All the provisions of title twenty-first of chapter twenty of the first part of the Revised Statutes, respecting insurance on property in this state, made in foreign countries, and by individuals and associations unauthorised by law, and all the prohibitions, requirements and penalties therein contained, are hereby extended and applied to contracts of insurance, or by way of insurance against marine losses and risks, or by lending money on respondentia or bottomry, and to all persons, associations or companies, and agents of the same, making, effecting or procuring any such insurance, or contracts, by way of insurance or loan, or any other business which marine insurance companies, incorporated by the laws of this state may or do transact, by virtue of their respective acts of incorporation.

CHAP. 30.

AN ACT amending the Revised Statutes, in relation to insurances made on property in this state against losses by fire in foreign countries, and by individuals and associations unauthorized by law.

PASSED February 21, 1837.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. Section three of title twenty-one of the first part of the Revised Statutes, is hereby so amended as to read as follows:

Amount to
be paid into
treasury.

§ 3. There shall be paid into the treasury of this state, on the first day of February in each year, by every person who shall act as agent for any individuals, or associations of individuals, not incorporated and authorized by the laws of this state, to effect insurances against losses by fire, or against marine losses and risks, although such individuals or associations may be incorporated for that purpose by any other state

or country, the sum of two dollars upon the hundred dollars, and at that rate upon the amount of all premiums which, during the year ending on the preceding first day of September, shall have been received by such agent or any other person for him, or shall have been agreed to be paid for any insurance effected or agreed to be effected or procured by him, as such agent, against loss or injury by fire, or against marine losses or risks.

20 B., 68; 3 E. D. S., 440, 453.

§ 2. The fourth section of said title and chapter is so far amended, as to require the condition of the bond, in said fourth section mentioned, to be for the payment of two dollars upon each one hundred dollars, instead of ten dollars as now required by that section. Section amended.

CHAP. 287.

AN ACT in relation to Mutual Insurance Companies.

PASSED May 13, 1840.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. Any mutual insurance company heretofore incorporated in this state whose charter limits the amount to be paid down upon premium notes to a sum not exceeding five per cent, may loan such portion of the said five per cent as may not be immediately wanted for the purposes of the corporation, upon good and ample security by bond or promissory notes. Mutual insurance companies may loan certain moneys.

§ 2. All bonds and promissory notes heretofore taken by any such Mutual insurance company for money loaned, shall be valid, and may be collected by such company. Bonds and mortgages received, valid.

[See in Part Third, under head of "Domestic Relations," Laws of 1840, ch. 80, for "An act in respect to insurance for lives for the benefit of married women."]

CHAP. 294.

AN ACT in relation to the insurance of public buildings.

PASSED September 18, 1847.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. The public officers having by law the care and custody of town, village, city or county buildings, are hereby authorized to insure the same at the expense and for the benefit of the town, village, city or county owning the same. Buildings to be insured.

CHAP. 205.

AN ACT in relation to the business of Mutual Insurance companies.

PASSED April 8, 1848.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Provision
respecting
member-
ship.

§ 1. Every person becoming a member of any mutual insurance company now incorporated under any law of this state in any of the counties of this state, by effecting insurance therein, shall, before he receives his policy, deposit his promissory note for such a sum of money as shall be determined by the directors of said company, such part of said note not exceeding twenty per cent, as shall be required by the by-laws of the corporation shall be immediately paid, and the remainder of the said deposit note shall be payable in whole or in part as the exigencies of the company shall require for the payment of losses by fire, and the incidental expenses of the company. At the expiration of the term of insurance, the said note or such part of the same as shall remain unpaid after receiving thereon from the maker a proportionate share for all losses and expenses occurring during said term, shall be relinquished by the company to the maker, and it shall be lawful for the company to loan such portion of the money as may not be immediately wanted for the use of the corporation, provided the same shall be secured by a bond and a mortgage on unincumbered real estate, of double the value of the sum loaned.

19 N. Y., 32; 16 N. Y., 210; 12 N. Y., 569; 9 N. Y., 589; 8 N. Y., 312; 4 N. Y., 51; 3 N. Y., 290; 1 N. Y., 371; 23 B., 656; 21 B., 605; 19 B., 440; 16 B., 254; 11 B., 205, 228; 5 D., 154; 7 H., 49; 3 H., 161, 508; 1 Du., 114; 4 S. S. C., 229; 2 S. S. C., 180; 1 S. S. C., 53, 158, 171, 184, 481, 629.

CHAP. 178.

AN ACT further to amend the acts in relation to insurances on property in this state made by individuals and associations unauthorized by law.

PASSED March 30, 1849; three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Moneys to
be paid to
fire depart-
ment, New
York.

§ 1. There shall be paid to the treasurer of the fire department of the city of New York, for the use and benefit of said fire department, on the first day of February in each year, by every person who shall act in the city and county of New York as agent for or on behalf of any individual, or associa-

tion of individuals, not incorporated by the laws of this state, to effect insurances against losses or injury by fire in the city and county of New York, although such individuals or association may be incorporated for that purpose by any other state or country, the sum of two dollars upon the hundred dollars, and at that rate upon the amount of all premiums which during the year or part of a year ending on the next preceding first day of September, shall have been received by such agent or person, or received by any other person for him, or shall have been agreed to be paid for any insurance effected or agreed to be paid for any insurance effected or agreed to be effected or promised by him, as such agent or otherwise, against loss or injury by fire in the city and county of New York.

3 E. D. S., 440 ; 20 B., 68.

§ 2. No person shall, in the city and county of New York, as agent or otherwise, for any individual, individuals, or association, effect or agree to effect any insurance, upon which the duty above mentioned is required to be paid, or as agent or otherwise procure such insurance to be effected, until he shall have executed and delivered to the said treasurer a bond to the fire department of the city of New York, in the penal sum of one thousand dollars, with such sureties as the said treasurer shall approve, with a condition that he will annually render to the said treasurer on the first day of February in each year, a just and true account, verified by his oath that the same is just and true, of all premiums which during the year ending on the first day of September preceding such report shall have been received by him or by any other person for him, or agreed to be paid for any insurance against loss or injury by fire in the city and county of New York, which shall have been effected or promised by him or agreed to be effected or promised by him to be effected, from any individual or individuals or association not incorporated by the laws of this state as aforesaid ; and that he will annually on the first day of February in each year pay to the said treasurer two dollars upon every hundred, and at that rate, upon the amount of such premiums.

Insurance by certain agents when to be effected.

§ 3. Every person who shall effect, agree to effect, promise or procure any insurance specified in the preceding sections of this act without having executed and delivered the bond required by the preceding section, shall for each offence forfeit one thousand dollars for the use of the said fire department ; such penalty of one thousand dollars shall be collected in the name of the fire department of the city of New York.

Penalty for not executing bond.

4 E. D. S., 453.

§ 4. Every person who at any time hereafter, as agent or otherwise, for any individual or individuals, or association, may in the city and county of New York, effect or agree to effect any insurance specified in the preceding sections of this act, shall on the first day of February, in each year, or

Agents to state where their places of business are in N. Y.

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within ten days thereafter, and as often in each year as he shall alter or change his place of doing business in the said city, report in writing under his proper signature to the comptroller of this state, and also to the treasurer of the fire department in the city of New York, the street and number thereof in the said city, of his place of doing business as such agent or otherwise, designating in such report the individual or individuals, and association or associations for which he may be such agent or otherwise. And in case of default in any of these particulars, such person shall forfeit for every offence, the sum of one thousand dollars, to be recovered and collected in the name of the people of this state, for the use of the fire department of the city of New York.

See Laws of 1857, ch. 548.

Sections 1,
2 & 3 to ap-
ply to every
city and
village.

§ 5. Sections one, two and three of this act, shall apply to every city or incorporated village in this state where a treasurer of a fire department exists, and where no officer is known by the laws of such city or village, the treasurer of such city or incorporated village, shall exercise all the powers and perform all the duties for the purposes of this act of the treasurer of the fire department of the city of New York, as far as relates to the city or village of which he is treasurer, and he shall under the direction of the common council of the city, or the trustees of the village, pay over all moneys received or recovered under the first, second and third sections of this act, to the fire department of such city or incorporated village, provided, however, that the penalty of the bond required by the second section of this act, shall not exceed the sum of five hundred dollars, when taken by the person authorized to receive it by this section, and that the penalty imposed by the third section of this act, shall not exceed the sum of two hundred dollars in any city or village of this state, excepting the city of New York.

Repeal.

§ 6. All the provisions of sections three, four, five, six, seven, of the title twenty-one, chapter twenty of the first part of the Revised Statutes, as amended by the act of the 21st February, 1837, so far as they relate to fire insurance, are hereby repealed.

CHAP. 308.

AN ACT to provide for the incorporation of insurance companies.

PASSED April 10, 1849.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Formation
of compa-
nies.

§ 1. Any number of persons, not less than thirteen in number, may associate and form an incorporated company for either of the following purposes, to wit:

CHAP. XX.

To make marine insurance.

1. To make insurance upon vessels, freights, goods, wares, merchandise, specie, bullion, jewels, profits, commissions, bank notes, bills of exchange, and other evidences of debt, bottomry, and respondentia interests, and to make all and every insurance appertaining to or connected with marine risks and risks of transportation and navigation.

2. To make insurance on dwellings, houses, stores, and all kinds of buildings, and upon household furniture, merchandise and other property, against loss or damage by fire and the risks of inland navigation and transportation.

To make fire insurance.

3. To make insurance upon the health or lives of individuals, and every insurance appertaining thereto or connected with health or life risks, and to grant, purchase or dispose of annuities.

Upon health or lives.

24 N. Y., 307; 19 N. Y., 33; 16 N. Y., 280, 315, 491; 12 N. Y., 258; 31 B., 176; 29 B., 305; 28 B., 576; 24 B., 395; 16 B., 493; 4 Bos., 22; see Laws of 1851, ch. 95.

§ 2. Any company organized under this act shall have power to make re-insurance of any risks taken by them respectively, and may make insurance upon any or all of the risks mentioned in the first or second subdivisions of the first section. But no company making insurance on the health or lives of individuals shall be permitted to take any other kind of risks, nor shall the business of live insurance and of health insurance be in any wise connected or united in any company making insurance on marine or fire risks.

Power to reinsure.

Life insurance to be separate.

24 B., 199.

§ 3. Such persons shall file in the office of the secretary of state a declaration, signed by all the corporators, expressing their intention to form a company for the purpose of transacting the business of insurance as expressed in the several subdivisions of the first section of this act, which declaration shall also comprise a copy of the charter proposed to be adopted by them, and shall publish a notice of such their intention, once in each week for at least six weeks in a public newspaper in the county in which such insurance company is proposed to be located.

Corporators to file declaration.

21 N. Y., 55.

§ 4. It may and shall be lawful for the individuals associated for the purpose of organizing any company under this act, after having published the notice and filed their declaration and charter as required by the preceding section, to open books for subscription to the capital stock of the company so intended to be organized, and to keep the same open until the full amount specified in the charter is subscribed; or, in case the business of such company is proposed to be conducted on the plan of mutual insurance then to open books to receive propositions, and enter into agreements in the manner and to the extent hereinafter specified.

Book of subscription to stock to be opened.

§ 5. No joint stock company organized for the purposes mentioned in this act, shall be organized in the city and

Provision relative to capital

PART I.
stock or
premium
notes.

county of New York, nor in the county of Kings, with a smaller capital than one hundred and fifty thousand dollars; nor in any other county in this state with a smaller capital than fifty thousand dollars: nor shall any company formed for the purpose of doing the business of marine, or fire, or inland navigation insurance, on the plan of mutual insurance, commence business, if located in the city of New York or in the county of Kings, until agreements have been entered into for insurance with at least one hundred applicants; the premiums on which, if it be marine, shall amount to three hundred thousand dollars, or if it be fire or inland navigation, shall amount to two hundred thousand dollars, and notes have been received in advance for the premiums on such risks payable at the end of, or within twelve months from the date thereof, which notes shall be considered a part of the capital stock, and shall be deemed valid, and shall be negotiable and collectible for the purpose of paying any losses which may accrue or otherwise, nor shall any mutual insurance company in any other county in the state commence business until agreements have been entered into for insurance, the premiums on which shall amount to one hundred thousand dollars, and the notes received therefor, payable as aforesaid, and which notes shall be liable for and used as aforesaid, nor shall any company which may be organized under this act, expose itself to any loss on any fire or inland navigation risk, or hazard to an amount exceeding ten per cent of its capital.

Capital for
life or
health in-
surance.

§ 6. No company formed for doing the business of life or health insurance on the plan of mutual insurance shall commence business until a cash capital of one hundred thousand dollars shall have been paid in and actually invested either in the stocks of the incorporated cities of this state, the stocks of this state or of the United States, or in bonds and mortgages on cultivated farms, worth double the amount for which the same is mortgaged; the value of the land to be appraised by three disinterested commissioners, appointed by the first judge of the county where such company is to be located. Farm buildings to form no part of the valuation.

28 B., 576. See Laws of 1853, ch. 463, § 22.

Provision
respecting
companies
incorporat-
ed by other
states.

§ 7. It shall not be lawful for any company organized under this act to transact business unless possessed of capital or securities as hereinbefore mentioned; nor shall it be lawful for any agent or agents of insurance companies incorporated by other states, directly or indirectly to take risks, or transact any business of insurance in this state, without procuring a certificate of authority from the comptroller of this state, and such agent or agents, having procured a statement under the oath of the president or secretary of the company for which he or they may act, which statement shall show the amount of the capital of such company, the manner in which the same is invested, and shall also state the fact whether its capital is impaired, and if so, how much; such statement

shall be filed in the office of the county clerk of the county where such agent resides, and shall be published in at least one newspaper, if a newspaper be therein published, at least six successive weeks after the filing of such statement as aforesaid; the first statement shall be filed in the month of January next, and such statement shall be procured annually, and filed and published in each and every succeeding month of January thereafter, as long as such agency continues, and no company incorporated by other states shall transact business in this state, unless possessed of the amount of actual capital required of companies formed under the provisions of this act, and no agency of any life insurance company formed under the laws of other states, shall transact its business in this state, unless it shall first prove to the satisfaction of the comptroller, of which fact he shall give a certificate to be filed in the office of the clerk of the county where such agency is established, that it possesses such an amount of actual capital as is required of companies transacting the business of life insurance under the laws of this state. Nor shall it be lawful for any agent or agents, hereafter to be appointed, of any company incorporated by any foreign government, other than the states of this Union, for the purpose of insurance, to transact the business of insurance in this state, without procuring a certificate of authority from the comptroller; such agent or agents having previously furnished evidence to the satisfaction of the comptroller of the state, that such company has invested in the stocks of this state, or the United States, an amount equal to the amount of capital or security required by this act, and such stocks are held in trust by citizens of this state for the benefit and security of such as may effect insurance with him or them. And the agent or agents furnishing satisfactory evidence as aforesaid, shall be entitled to a certificate thereof from the comptroller aforesaid. The statements and evidences of investments required by this section, shall be renewed from year to year, in the month of January in each year, and the comptroller, on being satisfied that the capital securities and investments remain secure as at first, shall furnish a renewal of certificates as aforesaid; and the agent or agents obtaining such certificates shall file the same together with a copy of the statements on which it was obtained or renewed, in the office of the clerk of the county in which such agency shall be established, and shall cause the same to be published in at least one newspaper published in such county. Any violation of the provisions of this section shall subject the party violating to a penalty of five hundred dollars for each violation, which shall be sued for and recovered in the name of the people, by the district attorney of the county in which the agent or company so violating shall be situated, and the said penalty when recovered shall be paid into the treasury of said county, provided that all companies incorporated by any

Respecting
companies
formed by
foreign go-
vernments.

Statements
to be annu-
ally renew-
ed.

PART I.

Meaning of
the term
agent.

government other than the states of this Union, which may have appointed such agent or agents before the first day of March, one thousand eight hundred and forty-eight, may hereafter appoint a new agent or agents in the case of the death, resignation or removal of an agent or agents previously appointed. The term agent or agents used in this section, shall include an acknowledged agent or surveyor, or any other person or persons, who shall in any manner aid in transacting the insurance business of an insurance company not incorporated by the laws of this state.

12 N. Y., 569.

Capital or
funds, how
invested.

§ 8. It shall be lawful for any company organized under this act, to invest its capital or the funds accumulated by its business or any part thereof in bonds and mortgages on unincumbered real estate within the state of New York, worth fifty per cent more than the sum loaned thereon, and also in the stocks of this state or of the United States, and also in any or all stocks or bonds of either of the incorporated cities of this state, and which stocks or bonds shall be at or above par at the time of such investment, and to lend the same or any part thereof, on the security of such stock or bonds, and any company organized for the purpose of marine insurance, may, in addition to the foregoing, loan their funds on bottomry and respondentia, and change and re-invest the same, as occasion may from time to time require.

Surplus.

But any surplus accumulation over and above the capital stock of any such company, may be invested in or loaned upon the pledge of the public stock of any one of the United States, or the stock, bonds or other evidence of debt of any institution incorporated under the laws of this state, except their own stock; provided that the current market value of such corporate stocks, bonds or other evidence of debt, shall be at the time of the loan thereon at least ten per cent more than the sum so loaned thereon: Provided, however, that any permanent or reserved fund established or created by such company shall be invested in the same manner as capital stock is required to be, except that the restriction as to the securities being at par shall not apply thereto.

Thus amended by Laws of 1857, ch. 469.

24 B., 199; 15 W., 502; 1 Hall, 480, 554.

Restriction
as to real
estate.

§ 9. No company organized by or under the provisions of this act shall be permitted to purchase, hold and convey real estate, excepting for the purposes and in the manner herein set forth to wit:

1. Such as shall be requisite for its immediate accommodation in the transactions of its business: or,

2. Such as shall have been mortgaged to it in good faith, by way of security for loans previously contracted or for moneys due: or,

3. Such as shall have been conveyed to it in satisfaction of debts previously contracted in the course of its dealings: or,

4. Such as shall have been purchased at sales upon judgments, decrees or mortgages obtained or made for such debts; and it shall not be lawful for any company incorporated as aforesaid, to purchase, hold or convey real estate, in any other case or for any other purpose; and all such real estate as may be acquired as aforesaid, and which shall not be necessary for the accommodation of such company in the convenient transaction of its business, shall be sold and disposed of within five years after such company shall have acquired title to the same, and it shall not be lawful for such company to hold such real estate for a longer period than that above mentioned, unless the said company shall procure a certificate from the comptroller, that the interests of the company will suffer materially by a forced sale of such real estate, in which event the time for the sale may be extended to such time as the comptroller shall direct in said certificate.

§ 10. In addition to the foregoing provisions, it shall be the duty of the corporators of any and every company organized under this act to declare in the charter, which is herein required to be filed, the mode and manner in which the corporate powers given under and by virtue of this act are to be exercised, the mode and manner of electing trustees or directors, a majority of whom shall be citizens of this state, and the filling of vacancies, the period for the commencement and termination of its fiscal year, together with the amount of capital to be employed in the transaction of its business.

Mode and manner of acting to be declared in charter.

29 B., 306; 25 B., 458; 23 B., 656.

§ 11. The charter thus filed by the corporation shall be examined by the attorney-general, and if found to be in accordance with the requirements of this act and not inconsistent with the constitution or laws of this state, he shall certify the same to the comptroller of the state, and the said comptroller shall thereupon cause an examination to be made, either by himself, or by three disinterested persons specially appointed by him for that purpose, who shall certify under oath that an amount equal at least to the amount specified in the fifth section of this act, if it be a stock company, has been paid in and is possessed by it in money, or in such stocks and bonds and mortgages as are required by the eighth section of this act: or if a mutual company, that it has received and is in actual possession of the capital, premiums or engagements of insurance, as the case may be, to the full extent required by the fifth section of this act; or if it be a life and health insurance company, to the full amount, and invested in the same manner as required by the sixth section of this act; copies of such certificate shall be filed in the office of the secretary of state, whose duty it shall then be to furnish the corporation with a certified copy of the charter and certificates aforesaid, which upon being filed by them in the office of the clerk of the county in which their company is to be located, shall be their authority to commence business and issue policies, and

To be examined by attorney-general, and by comptroller.

PART I.

the same may be used in evidence for or against said corporation.

29 B., 306; 28 B., 578; 25 B., 109, 463; 24 B., 395; 21 B., 605.

By-laws
may be
made.

§ 12. The corporators, or the trustees or directors, as the case may be, of any company organized under the provisions of this act, shall have power to make such by-laws, not inconsistent with the constitution or laws of this state, as may be deemed necessary for the government of its officers and the conduct of its affairs.

23 B., 656.

Annual
statement
to be made
and pub-
lished.

§ 13. It shall be the duty of the president or vice-president, and secretary of each company organized under this act, annually on the first day of January, or within one month thereafter, to prepare under oath, and deposit in the office of the comptroller of the state, as well as in the office of the clerk of the county in which such company shall be located, and in each and every other county in which such company shall have an agency, and shall also cause to be published in at least one newspaper published in such county, a statement exhibiting the total amount of premiums received, and the total amount of losses, paid and ascertained, including expenses during the year; also the amount of debts owing by the company at the date of the statement, and the amount of claims which then exist against the company for losses accrued, showing what amount of such claims for losses is payable on demand, what amount thereof is considered fair or legal, the payment of which has not then matured according to the contract, and what amount thereof is resisted on account of alleged fraud, or for which the company do not consider themselves legally liable; also a statement of the securities representing the capital stock, and all funds of the company, and also whether any of the securities held or owned by such company are considered bad or doubtful, and if so specifying the amount of such securities, and the gross amount of outstanding risks thereon, and a list of the stockholders, if a stock company, together with the amount of their respective shares; and if upon due examination it shall appear to the comptroller that the losses and expenses of any stock company during the year have exceeded the premiums, and in consequence thereof the capital of such company has become deficient, or from any other cause has become impaired to the extent of twenty-five per cent, it shall be the duty of the said comptroller to direct the officers of any such company within sixty days, to proceed to wind up its business, unless within that time the stockholders thereof shall pay in the amount of such deficiency. Any company receiving such requisition from the comptroller shall forthwith call upon its stockholders for such amounts as will make its capital equal to the amount fixed by the charter of the said company, and in case any stockholder of such company shall refuse or neglect to pay such call, after notice personally given or by

Contents of
same.

In case of
deficiency.

Calls. when
to be made
on stock-
holders.

advertisement, in such time and manner as the comptroller shall approve, it shall be lawful for the said company to require the return of the original certificates of stock held by such stockholder, and in lieu thereof to issue new certificates for such number of shares as the said stockholder may be entitled to in the proportion that the ascertained value of the funds of the said company may be found to bear to the original capital of the said company, the value of such shares for which new certificates shall be issued to be ascertained under the direction of the comptroller and the company paying for the fractional parts of shares, and it shall be lawful for the directors of such company to create new stock and dispose of the same, and to issue new certificates therefor to an amount sufficient to make up the original capital of the company. And it is hereby declared that in the event of any additional losses accruing upon new risks, taken after the comptroller shall have made the requisition aforesaid, and before the said deficiency shall have been made up, the directors shall be individually liable to the extent thereof. And if upon due examination it shall appear to the comptroller that the losses and expenses of any company chartered on the plan of mutual insurance under this act, shall during the year have exceeded the premiums, and in consequence thereof that the capital of the company, as required in its organization, has become deficient, or from any other cause has become impaired, it shall be the duty of the comptroller to direct the officers to such mutual insurance companies to take the same proceedings as herein required to be taken in case of joint stock companies; and until such directions shall be complied with, the directors shall be personally liable to pay all damages occasioned by such neglect, to any person or body corporate which may be injured thereby. Any transfer of the stock of any company organized under this act, shall not release the party making the transfer from his liability for losses which may have accrued previous to the transfer.

In case of
mutual
companies.

25 B., 109; see Laws of 1852, ch. 123.

§ 14. Any existing joint stock company incorporated by this state for either of the purposes mentioned in the first section of this act, may at any time after notice being given for three months in a newspaper published in the county where such company is located, of such intention and with a written consent of a majority of three-fourths in amount of its stockholders, or if a mutual company with the unanimous consent of its trustees, extend its original charter to the time specified by the provisions of this act by altering or amending the same, so as to accord with the provisions of this act, and filing a copy of the same, so altered or amended, together with a declaration under its corporate seal, signed by its president and directors of their desire for such extension, and also the written consent of three-fourths of its stockholders, and the unanimous consent of the trustees as aforesaid to such exten-

Provision
respecting
existing
joint stock
and mutual
companies.

PART I.

sion, in the office of the secretary of the state, and upon the filing of such consent, declaration and charter, the same proceedings shall be had as are required by the eleventh section of this act, and any of the mutual insurance companies already chartered by the legislature of this state, may, after giving ninety days' notice in three of the public papers of the state, change to joint stock companies by proceeding in accordance with and conforming their charter to the provisions of this act.

25 B., 463.

**Duration of
charters.**

§ 15. All charters formed or extended under this act, shall be of thirty years' duration each, except those of life insurance, but the legislature may at any time alter, amend or repeal this act, or dissolve and provide for the closing up the business and affairs of any company formed under it.

25 B., 109.

**Suits, how
maintained**

§ 16. Suits at law may be maintained by any corporation formed under this act, against any of its members or stockholders, for any cause relating to the business of such corporation; also suits at law may be prosecuted and maintained by any member or stockholder against such corporation for losses which may have accrued if payment is withheld more than two months in all risks after such losses shall have become due.

25 B., 109; 19 B., 442; 16 B., 171.

**Companies
to be sub-
ject to Re-
vised Sta-
tutes**

§ 17. All companies formed under this act shall be deemed and taken to be bodies corporate and politic in fact and in name, and shall be subject to all the provisions of the Revised Statutes in relation to corporations so far as the same are applicable.

**Restriction
about trade.**

§ 18. No company formed under this act, shall, directly or indirectly, deal or trade in buying and selling any goods, wares, merchandise, or other commodities whatever.

**Liability of
corporators**

§ 19. The trustees and corporators of any company organised under this act, and those entitled to a participation of the profits shall be jointly and severally liable until the whole amount of the capital raised by the company shall have been paid in, and a certificate thereof recorded, as hereinbefore provided. Notes taken in advance of premiums under this act are not to be considered debts of the company in determining whether a company is insolvent, but are to be regarded as assets of the company.

Dividends.

§ 20. No dividend shall ever be made by any company incorporated under this act, when its capital stock is impaired, or when the making of such dividend will have the effect of impairing its capital stock, and any dividend so made shall subject each of the stockholders receiving the same to an individual liability to the creditors of said company, to the extent of such dividend received by him.

Thus amended by Laws of 1857, ch. 38.

CHAP. XX.
Marine
companies
may com-
bine mutual
and capital.

§ 21. It shall be lawful for any mutual company established or to be established in conformity with the provisions of the fourth section of this act, for the purposes of marine insurance, and having complied with the provisions of the fifth and eleventh sections of this act, to unite a cash capital to any extent not less than two hundred thousand dollars, as an additional security to the members over and above its premiums and stock notes, which additional cash capital shall be loaned and invested as provided in the eighth section of this act, and the company may allow an interest on such cash capital, and a participation in its profits; but no such interest shall be paid except out of the actual profits of such company, and no company shall avail itself of the provisions of this section until such cash capital, to the extent of at least one hundred thousand dollars, shall have been actually paid in, in cash; and the subscribers to such cash capital, whether payable in full or by installments, shall each be individually liable for the debts of said company to the extent of his individual subscription, or such proportion thereof as shall be required in order to satisfy the debts of said company, unless he shall have paid his subscription in full, and such cash capital shall itself be liable as the capital stock of the company in the payment of its debts. The holders of the said cash capital shall be entitled, in the election of trustees, to one vote for each one hundred dollars of stock held by them respectively, and the trustees may make such regulations in relation to the certificates of stock to be issued, and the transfer thereof, as they may deem necessary for the security of the company and the owners of the cash capital.

Subscriber
individu-
ally liable.

Capital to
be liable.

Thus amended by Laws of 1857, ch. 38; 28 B., 576.

§ 22. Any mutual insurance company heretofore incorporated by the state, and now in operation, having power to effect marine insurance and having its place of business in the city of New York, may increase its capital or fund on the amount of accumulated net profits, which it is permitted to retain for the benefit and security of its dealers to any amount which shall be deemed expedient by its board of trustees, provided however, that if there be in the charter of such mutual insurance company any limitation of its capital or fund, or the amount of net profits which it has the power to accumulate and retain, such increase shall not take place unless a written consent thereto under the corporate seal of the said company affixed thereto by a resolution of the board of trustees or directors, certified by the secretary, shall first be filed in the office of the comptroller of this state, and provided that the privilege of retaining profits over one million of dollars shall not be exercised by any company availing itself of the provisions of this act, until a sufficient sum shall have been applied by such company, according to the provisions of its

Existing
companies
may in-
crease.

PART I.

charter, towards the redemption of all certificates or premiums heretofore issued and now outstanding.

Added by Laws of 1855, ch. 292.

CHAP. 95.

AN ACT in relation to all companies transacting the business of Life Insurance within this State.

PASSED April 8, 1851.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

\$100,000 to
be deposit-
ed with
comptroller

§ 1. Every company or association transacting the business of life insurance within the state of New York, shall, on or before the first day of August, in the year one thousand eight hundred and fifty-one, deposit with the comptroller of this state the sum of fifty thousand dollars, and on or before the first day of February thereafter, the further sum of fifty thousand dollars, in public stocks of the United States, or of this state, or stocks or bonds of either of the incorporated cities of this state; and which stocks or bonds shall be at or above par at the time of such deposit, or in bonds and mortgages on unincumbered improved real estate situate within this state, and worth at least fifty per cent more than the amount of the mortgage thereon; and the president or agent of every company shall annex to every mortgage his affidavit that said mortgage was made and taken in good faith for money loaned by the company which he represents, to the amount therein named, and that no part thereof has been since paid or returned, and that he has reason to believe, and does believe, that the premises thereby mortgaged are worth at least fifty per cent more than the amount of the mortgage thereon; and the comptroller shall prescribe such regulations for ascertaining the title and value of such real estate as he may deem necessary; provided, however, that companies or associations established, or which may commence operation in this state by agents or otherwise, subsequent to the passage of this act, shall, before obtaining the certificate required by the act to provide for the incorporation of insurance companies, passed April tenth, eighteen hundred and forty-nine, deposit with the comptroller the sum of one hundred thousand dollars, in securities as hereinbefore specified.

Money, how
held and
how man-
aged.

§ 2. The comptroller shall hold said stocks, bonds and mortgages as security for policy holders in said companies, but shall, so long as any company so depositing shall continue solvent and shall comply with all the requisites of the laws of this state applicable to such company, permit such company to collect the interest or dividends on its bonds and mortgages or stocks so deposited, and from time to time to withdraw any of such securities on depositing with the comptroller

other like securities, stocks or mortgages, the par value of which shall be equal to the par value of such as may be withdrawn; each mortgage so substituted to be also accompanied with an affidavit as required in the first section; and the comptroller shall prescribe such regulations for ascertaining the title and value of the real estate covered by the mortgage so substituted, as he may deem necessary.

§ 3. It shall not be lawful for any person to act, within this state, as agent or otherwise in receiving or procuring application for insurance in or in any manner to aid in transacting the insurance business of any company or association not incorporated under the laws of this state, until he has procured a certificate from the comptroller that the company or association for which he acts has complied with all the provisions of this act; and for every certificate so obtained the sum of three dollars shall be paid to the comptroller.

Agents for
foreign
companies.

12 N. Y., 569; 20 B., 68.

§ 4. Every company or corporation organized under the laws of sister states or foreign governments, and transacting the business of life insurance in this state, shall, within three months after the passage of this act, and on or before the first day of February in each year thereafter, furnish to the comptroller, and shall also publish in the state paper, daily for two weeks, a statement, verified by the oath of their president or principal officer, and a majority of their directors or trustees, showing the amount of paid up capital, and accumulations of which they are possessed, and specifying the securities in which they are invested, with the amount of each; the number of policies, and the amount of outstanding risks thereon; the several amounts received in premiums and from other sources for the current year; the amount of losses and expenses severally for the same period; the amount of claims remaining unpaid; the amount of fund reserved for re-insurance; the amount of premium notes held by the company on account of policies in force; the amount of premium notes, if any, held on account of policies upon which the risk has terminated; the whole number of policies issued or continued through their agencies in this state, the amount at risk thereon, and the gross amount of premiums received therefor in the year preceding their report; the number and amount of losses paid through their agencies during the same period.

Reports to
be made by
foreign
companies.

§ 5. It shall be lawful for the comptroller, whenever he shall deem it expedient so to do, to appoint one or more competent persons, not officers of any life insurance company doing business in this state, to examine into the affairs of any life insurance company incorporated in this state, or doing business by its agents in this state, and it shall be the duty of the officers or agents of any company doing business in this state, to cause their books to be opened for the inspection of the person or persons so appointed, and otherwise to facilitate such examination so far as it may be in their power to

Affairs to
be examin-
ed.

PART I.

And report published.

Proceedings upon report.

Comptroller, when to revoke certificates.

Manner of closing business.

Penalties.

do ; and for that purpose the comptroller or the person or persons so appointed by him, shall have power to examine, under oath, the officers and agents of any company relative to the business of said company ; and whenever the comptroller shall deem it for the interest of the public so to do, he shall publish the result of such investigation in one or more papers in this state.

§ 6. Whenever it shall appear to the comptroller, from examination made under his direction, that the assets are not sufficient to insure the outstanding risks of any company incorporated in this state, he shall communicate the fact to the attorney general, whose duty it shall then become to apply to the supreme court for an order requiring them to show cause why the business of such company should not be closed, and the court shall thereon proceed to hear the allegations and proofs of the respective parties ; and in case it shall appear to the satisfaction of said court that the assets and funds of the said company are not sufficient as aforesaid, the said court shall decree a dissolution of said company and a distribution of its effects, including the securities deposited in the hands of the comptroller. The supreme court shall have power to refer the application of the attorney general to a referee to inquire and report upon the facts stated therein.

§ 7. Whenever it shall appear to the comptroller from the report of the person or persons appointed by him, that the affairs of any foreign company, as aforesaid, are in an unsound condition, he shall revoke all such certificates in behalf of such company, and shall cause a notification thereof to be published in the state paper for four weeks, and the agent of such company is, after such notice, required to discontinue the issuing of any new policy.

§ 8. When any company transacting the business of life insurance within the state of New York, shall desire to relinquish its business, the comptroller shall, on application of such company or association, under the oath of the president or principal officer, and secretary, give notice of such intention in the state paper at least twice a week, for six months ; and after such publication he shall deliver up to such company or association, the securities held by him belonging to them, on being satisfied by the exhibition of the books and papers of such company or association and the examination aforesaid, and upon the oath of the president or principal officer, and secretary of the same, that all debts and liabilities of every kind are paid and extinguished, that are due or may become due upon any contract or agreement, made with any citizen of this state.

§ 9. Every violation of this act shall subject the party violating to a penalty of five hundred dollars for each violation, which shall be sued for and recovered in the name of the people, by the district attorney of the county in which the company or the agent or agents so violating shall be situated,

and one-half of the said penalty, when recovered, shall be paid into the treasury of said county, and the other half to the informer of such violation ; and in case of the non-payment of such penalty, the party so offending shall be liable to imprisonment for a period not exceeding six months, in the discretion of any court having cognizance thereof.

20 B., 68.

§ 10. So much of the act passed April tenth, one thousand eight hundred and forty-nine, in relation to the incorporation of insurance companies, as is inconsistent with the provisions of this act, is hereby repealed. Repeal.

CHAP. 188.

AN ACT in relation to mutual fire insurance companies.

PASSED April 17, 1851.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. No member of any mutual fire insurance company, organized under the laws of this state, shall be allowed to vote by proxy for a director, or directors, of any such company.

[See *Anta*, under the head of "General Provisions" for Laws of 1852, ch. 71, for the duties of Receivers and particularly of Mutual Insurance Companies.]

CHAP. 123.

AN ACT to amend an act entitled "An act to provide for the incorporation of Insurance companies," passed April tenth, one thousand eight hundred and forty-nine.

PASSED April 1, 1852.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. It shall and may be lawful, for any marine insurance company to be organized pursuant to the provisions of the said act hereby amended, to establish and maintain one or more agencies beyond the United States, for the transaction of its lawful business, upon such terms and conditions as the said company may prescribe. Agencies beyond the U. S.

§ 2. In case any such agency or agencies shall be established in Asia or Europe, the statement required by the thirteenth section of the said act hereby amended, may be deferred for the space of five months from and after the first day of January in each year, and when made, it shall refer to the first day of January then next preceding. In Asia or Europe.

CHAP. 463.

AN ACT to provide for the incorporation of life and health insurance companies, and in relation to agencies of such companies.

PASSED June 24, 1853.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Company
may be cre-
ated.

§ 1. Any number of persons, not less than thirteen in number, may associate and form an incorporation or company for the purposes specified in either of the following departments:

First department. To make insurance upon the lives of individuals and every insurance appertaining thereto or connected therewith, and to grant, purchase or dispose of annuities.

Second department. To make insurance upon the health of individuals, and upon the lives of horses, cattle and other live stock.

Every company organized under this act shall have authority to reinsure any risk herein authorized to be undertaken.

Companies
to make in-
surance on
life only,
and the
granting,
&c., of an-
nuities.

§ 2. No company, partnership, or association, organized or incorporated by or under the laws of this or any other state of the United States or any foreign government, transacting the business of life insurance in this state, shall be permitted or allowed to take any other kind of risks except those connected with or appertaining to making insurance on life, and the granting, purchasing and disposing of annuities; nor shall the business of life insurance in this state be in any wise conducted or transacted by any company, partnership or association, which in this, or any other state or country, makes insurance on marine or fire risks, excepting by such foreign companies and associations as shall have already made the deposit in the insurance department required for the transaction of life insurance business in this state.

Exception.

Thus amended by Laws of 1862, ch. 300.

Corporators
may file de-
claration.

§ 3. The persons referred to in the first section of this act shall be designated as corporators, and they shall file in the office of the comptroller, a declaration signed by each of the corporators, setting forth their intentions to form a company for the purposes named in this act, which declaration shall comprise a copy of the charter they propose to adopt, and the said charter shall set forth the name of the company; the place where it is to be located; the kind of business to be undertaken by referring to and repeating the department of the first section of this act to which they refer; the mode and manner in which the corporate powers of the company are to be exercised; the manner of electing the trustees or directors and officers, a majority of whom shall be citizens of this state,

and the time of such election; the manner of filling vacancies; the amount of capital to be employed; and such other particulars as may be necessary to explain and make manifest the objects and purposes of the company, and the manner in which it is to be conducted.

§ 4. Whenever the corporators shall file such declaration with the comptroller, it shall become his duty to submit the same to the attorney general for examination; and, if found by him to be in accordance with the provisions of this act, and not inconsistent with the constitution and laws of the United States and of this state, he shall certify to the same and deliver it back to the comptroller, who shall cause the said declaration, with the certificate of the attorney general, to be recorded in a book to be kept for that purpose, and, upon application of the corporators to the comptroller, it shall become his duty to furnish a certified copy of such declaration and certificate to the said corporators.

Attorney-general to certify to declaration.

§ 5. Whenever the corporators shall have received from the comptroller the certified copy provided for in the last section, and desire to proceed to organize such company, they shall publish their intentions in the paper in which the state notices are directed to be inserted; and when such intentions have been published in said paper for six weeks, they may open books to receive subscriptions to the capital stock, and keep such books open until the amount required by this act is subscribed, and may then proceed to distribute the stock among the subscribers, if more than the necessary amount is subscribed, and proceed to collect in the said capital and complete the organization of the company.

To publish intention to form company.

And open books for subscription.

§ 6. No company shall be organized under this act, for the purposes mentioned in the first department, with a less capital than one hundred thousand dollars, and no company shall be organized, for the purposes mentioned in the second department, with a less capital than twenty-five thousand dollars. The whole capital of such company shall, before proceeding to business, be paid in and invested in stocks or in treasury notes of the United States or of the state of New York, or in bonds and mortgages on improved unincumbered real estate within the State of New York, worth seventy-five per cent more than the amount loaned thereon, exclusive of farm buildings thereon, or in such stocks or securities as now are or may hereafter be receivable by the banking department. And it shall be lawful for any company organized under this act, to change and re-invest its capital, or any part thereof, at any time they may desire, in the stocks or bonds and mortgages or securities aforesaid. No company organized for the purposes mentioned in the first department, shall commence business until they have deposited with the superintendent of the insurance department of this state the sum of one hundred thousand dollars in United States or New York State stocks in all cases to be or to be made to be equal

Capital stock of companies.

Deposits to be made with superintendent.

PART I.

to stock producing six per cent per annum, and not to be received at a rate above their par value or above their current market value, or in bonds and mortgages of the description and character above indicated; and no company organized for the purposes named in the second department shall commence business until they have deposited with the Superintendent of the Insurance Department of this state the sum of twenty-five thousand dollars, invested as hereinbefore provided for the investment of the capital of such company. The Superintendent of the Insurance Department shall hold such securities as security for policy holders in said companies, but so long as any company so depositing shall continue solvent, may permit such company to collect the interest or dividends on its securities so deposited, and from time to time to withdraw any of such securities on depositing with the said Superintendent such other securities of like value as those withdrawn, and of the same character and to be received as those above mentioned.

Thus amended by Laws of 1862, ch. 300.

Comptroller to furnish certificate of deposit.

§ 7. Whenever the corporators shall have fully organized such company, and the said company have deposited with the comptroller the requisite amount of capital, it shall become his duty to furnish the corporation with a certificate of such deposit, which, with a certified copy of the papers previously required under this act, shall, when filed in the county clerk's office of the county where such company is to be located, be the authority to commence business and issue policies, and the same may be used in evidence for and against the corporation in all suits.

Funds may be invested in bonds and mortgages.

§ 8. It shall be lawful for any company organized under this act to invest its funds or accumulations in bonds and mortgages on unincumbered real estate within the State of New York, worth fifty per cent more than the sum so loaned thereon, exclusive of buildings, unless such buildings be insured in a good and solvent insurance company or companies and the policy or policies of insurance be assigned as collateral security for the monies loaned, or in stocks or treasury notes of the United States, stocks of this state, or stocks of any incorporated city of this state, and to lend the same or any part thereof on the security of such bonds and mortgages, and upon the pledge of such stocks, or treasury notes; provided that the current market value of such stocks or treasury notes shall be at least ten per cent more than the sum so loaned thereon.

Thus amended by Laws of 1862, ch. 300.

To hold real estate

§ 9. No company organized under this act shall be permitted to purchase, hold or convey real estate, except for the purposes and in the manner herein set forth, to wit:

1. Such as shall be requisite for its immediate accommodation in the transaction of its business; or,

2. Such as shall have been mortgaged to it in good faith, by way of security for loans previously contracted, or for moneys due; or,

3. Such as shall have been conveyed to it in satisfaction of debts previously contracted in the course of its dealings; or,

4. Such as shall have been purchased at sales upon judgments, decrees or mortgages obtained or made for such debts; and it shall not be lawful for any company incorporated as aforesaid to purchase, hold or convey real estate in any other case or for any other purpose; and all such real estate as may be acquired as aforesaid, and which shall not be necessary for the accommodation of such company in the convenient transaction of its business, shall be sold and disposed of within five years after such company shall have acquired title to the same; and it shall not be lawful for such company to hold such real estate for a longer period than that above mentioned, unless the said company shall procure a certificate from the comptroller that the interests of the company will suffer materially by a forced sale of such real estate, in which event the time for the sale may be extended to such time as the comptroller shall direct in said certificate.

§ 10. The corporators, or the trustees or directors, as the case may be, of any company organized under this act shall have power to adopt a seal, and to make such by-laws, not inconsistent with this act or the constitution and laws of this state, as may be deemed necessary for the management of its affairs; and suits at law may be maintained by any corporation formed under this act against any of its members or stockholders for any cause relating to the business of such company; also, suits at law may be prosecuted and maintained by any member or stockholder against such corporation for losses which may have accrued, if payment is withheld more than two months, on all risks, after such losses shall have been due.

To adopt seal, make by-laws, &c

§ 11. All companies formed under this act shall be deemed and taken to be bodies corporate and politic, in fact and in name, and shall be subject to all the provisions of the Revised Statutes in relation to corporations, so far as the same are applicable, except in regard to annual statements and other matters herein otherwise specially provided for.

Companies formed, to be bodies corporate.

§ 12. It shall be the duty of the president or vice-president and secretary or actuary, or a majority of the trustees of each company organized under the laws of this state, annually, on the first day of January, or within sixty days thereafter, to prepare under oath, and deposit in the office of the comptroller of the state, a statement, showing :

Statement, under oath, to be made annually.

1. The number of policies issued during the year.
2. The amount of insurance effected thereby.
3. Amount of premium received during the year.
4. Amount of interest and all other receipts, specifying the items.

PART I.

5. Amount of losses paid during the year.
6. Amount of losses unpaid.
7. Amount of expenses.
8. Whole number of policies in force.
9. Amount of liabilities or risks thereon, and of all other liabilities.
10. Amount of capital stock.
11. Amount of accumulation, specifying whether received upon life insurance, annuities, or how otherwise.
12. Amount of assets and manner in which they are invested, specifying what amount in real estate, on bond and mortgage, stocks, loans, on stocks, premium notes, credits or other securities.
13. Amount of dividend unpaid.
14. A tabular statement of the policies in force for the whole term of life, showing how many thereof for each age of life, and for what amount of risk, were issued or in force during the first year of the existence of the company, during the second year, and so on up to the time of making such statement.
15. A tabular statement of the policies in force for a shorter period than the whole term of life, showing how many thereof for each age of life, and for what amount of risk, were issued, or continued in force during the first year of the company's existence, during the second year, and so on up to the time of making such statement.

The comptroller shall cause to be prepared, and furnished to every company to which this act shall apply, printed forms of the statements herein required; and he may make such changes from time to time, in the form of the same, as shall seem to him best adapted to elicit from said companies a true exhibit of their condition in respect to the several points hereinbefore enumerated.

Statements
to be com-
municated
to the legis-
lature.

§ 13. It shall be the duty of the comptroller to cause the information contained in the statements required in the last section to be arranged in a tabular form, and prepare the same in a single document for printing, which he shall communicate to the Legislature.

Agents,
when to act
for compa-
nies of
other states

§ 14. It shall not be lawful for any person to act within this state, as agent or otherwise, in receiving or procuring applications for insurance, or in any manner to aid in transacting the business of insurance referred to in the first section of this act, for any company or association incorporated by, or organized under, the laws of any other state government, unless such company is possessed of the amount of actual capital required by the sixth section of this act, for companies in this state, and the same is invested in stocks or treasury notes of the United States, or of the State of New York, or of the state in which said company is located, or in bonds and mortgages on improved, unincumbered real estate within the state where such company is located, or in such stocks or

securities as now are, or may hereafter be, receivable by the bank department; but all mortgages deposited by any company under this section shall be upon improved, unincumbered real estate worth seventy-five per cent more than the amount loaned thereon, which stocks and securities shall be deposited with the Auditor, Comptroller, or chief financial officer of the state, by whose laws said company is incorporated, and the Superintendent of the Insurance Department of this State furnished with the certificate of such Auditor, Comptroller or chief financial officer aforesaid under his hand and official seal, that he, as such Auditor, Comptroller, or chief financial officer of such state, holds in trust and on deposit, for the benefit of all the policy holders of such company, the security before mentioned, which certificate shall embrace the items of the security so held, that he is satisfied that such securities are worth one hundred thousand dollars, if the company proposes to transact the business referred to in the first department, or that they are worth twenty-five thousand dollars if the company proposes to transact the business referred to in the second department. But nothing herein contained shall be construed to invalidate the agency of any company incorporated by another state by reason of such company having from time to time exchanged the securities so deposited with the Auditor, Comptroller, or chief financial officer of the state in which such company is located, for other stock or securities, authorized by this act, or by reason of such company having drawn its interest and dividends, from time to time, for such stocks and securities. Such company shall also appoint an attorney in this state, on whom process of law can be served; and such attorney shall file with the Superintendent of the Insurance Department a certified copy of the charter of said company, and also a certified copy of the vote or resolution of the trustees or directors of the said company appointing such attorney, which appointment shall continue until another attorney be substituted. And in case any such insurance corporation shall cease to transact business in this state according to the laws thereof, the agents last designated or acting as such for such corporation, shall be deemed to continue agents for such corporation for the purpose of serving process for commencing actions upon any policy or liability issued or contracted while such corporation transacted business in this state, and service of such process for the causes aforesaid upon any such agent, shall be deemed a valid personal service upon such corporation. Such company shall also file a statement of its condition and affairs in the office of the Superintendent of the Insurance Department, in the same form and manner required for the annual statements of similar companies organized under the laws of this state. It shall not be lawful for any agent to act for any company referred to in this section, directly or indirectly, in taking risks, collecting premiums, or

Certificate
to be fur-
nished as to
security.

Saving
clause.

Attorney to
be appoint-
ed on whom
process
may be
served.
Charter to
be filed.

Service of
process.

Statement
to be filed.

Certificate
to be pro-
cured be-
fore agent
can act.

PART I.

To be filed
in county
clerk's
office.

in any manner transacting the business of life insurance in this state, without procuring from the said Superintendent a certificate of authority, stating that the foregoing requirements have been complied with, and setting forth the name of the attorney for such company; a certified copy of which certificate shall be filed in the county clerk's office of the county where the agency is to be established, and shall be the authority of such company and agent to commence business in this state; and such company or its attorney shall annually, in the month of January, file with the superintendent of the Insurance Department of this state a statement of its affairs for the preceding year, in the same manner and form provided in the twelfth section of this act for similar companies in this state; and if the said annual statement shall be satisfactory evidence to the Superintendent of the Insurance Department of the solvency and ability of the said company to meet all its engagements at maturity, and that the said deposit is maintained as above required and provided, he shall issue renewal certificates of authority to the agents of said company, certified copies of which shall be filed in the county clerk's office of the county where the agency is located, during the month of January in each year; and which renewal certificates shall be the authority of such agents to issue new policies in this state for the ensuing year.

So amended by Laws of 1862, ch. 300.

Agents,
when to act
for foreign
companies.

An attorney
to be ap-
pointed on
whom pro-
cess may
be served.

§ 15. It shall not be lawful for any person to act in this state as agent or otherwise, in receiving or procuring applications for life or health insurance, or in any manner to aid in transacting the business of any life or health insurance company, partnership or association, incorporated by or organized under the laws of any foreign government, until such company, partnership or association shall have deposited with the Superintendent of the Insurance Department, for the benefit of the policy holders of said company, partnership or association, citizens or residents of the United States, securities to the amount of one hundred thousand dollars, of the kind required or which may hereafter be required for similar companies of this state, and shall have appointed an attorney in this state on whom process of law can be served; and the said company, partnership or association shall have filed with the Superintendent of the Insurance Department a duly certified copy of the charter or deed of settlement of the said company, partnership or association, and also a duplicate original copy of the letter or power of attorney of such company or association appointing the attorney thereof, which appointment shall continue until another attorney be substituted. And in case any such insurance corporation shall cease to transact business in this state according to the laws thereof, the agents last designated or acting as such for such corporation, shall be deemed to continue agents for such corporation for the purpose of serving process for commencing

CHAP. XX.

Service of process.

Statement to be filed.

Agents not to act without certificate.

Certificate to be filed.

Annual statement.

What to contain.

When renewal certificates to be issued.

Foreign companies to pay tax.

actions upon any policy or liability issued or contracted while such corporation transacted business in this state, and service of such process for the causes aforesaid upon any such agent, shall be deemed a valid personal service upon such corporation. Such company, partnership or association shall also file a statement of its condition and affairs in the office of the Superintendent of the Insurance Department, in the same form and manner required for the annual statements of similar companies organized under the laws of this state. It shall not be lawful for any agent or agents to act for any company, partnership or association referred to in this section, directly or indirectly, in taking risks, collecting premiums, or in any manner transacting the business of life insurance in this state, without procuring from the said Superintendent a certificate of authority (which shall be renewable annually) stating that the foregoing requirements have been complied with, and setting forth the name of the attorney for such company, a certified copy of which certificate shall be filed in the county clerk's office of the county where the agency is to be established, and which shall be the authority of such company and agent to commence business in this state; and such company, partnership or association shall annually, on the first day of January, or within thirty days thereafter, file with the Superintendent of the Insurance Department a statement of all its affairs in the same manner and form provided in the twelfth section of this act for similar companies in this state; which statement shall be made up for the year ending on the preceding thirtieth day of June, accompanied also by a supplementary annual statement, duly verified by the attorney or general agent of the company or association in this state, giving a detailed description of the policies issued and those which have ceased to be in force during the year, the amount of premiums received and claims and taxes paid in this state and the United States for the year ending on the preceding thirty-first day of December; said supplementary statement shall also contain a description of the investments of such company or association in this country, and such other information as may be required by said Superintendent; and if the said annual statement shall be satisfactory evidence to the said Superintendent of the solvency and ability of the said company to meet all its engagements at maturity, he shall issue renewal certificates of authority to the agents of said company, partnership or association, certified copies of which shall be filed by such agents in the county clerk's office of the county where the agency is located, within sixty days after the first day of January in each year, and which renewal certificates shall be the authority of such agents to issue new policies in this state for the ensuing year. All such foreign insurance companies, partnerships and associations engaged in the transaction of the business of life or health insurance in this state, shall annually, on or before the first day of March

PART I.

Avails of
tax to be
paid into
state treas-
ury.

in each year, pay to the Superintendent of the Insurance Department a tax of two per cent on all premiums received in cash or otherwise by their attorneys or agents in this state, during the year ending on the preceding thirty-first day of December, upon which a tax on premiums has not been paid to any other state. The avails of said tax shall be paid into the state treasury, and shall be applicable, as far as necessary, towards defraying the expenses of the insurance department. In case of neglect or refusal by any such company to pay said tax, the Superintendent is hereby authorized to collect the same out of the interest on the stocks and securities deposited by such company in the insurance department.

So amended by Laws of 1862, ch. 300; 28 B., 318.

Fees.

Transfer of
records.

Comptrol-
ler to cause
examina-
tion to be
made.

§ 16. There shall be paid by every association, person or persons to whom this act shall apply, the following fees, to be appropriated towards paying the expenses of executing said act; for filing the declaration required by the third section, or the certified copy of a charter, as required by the fourteenth and fifteenth sections, the sum of twenty dollars; for filing the annual statement, five dollars. And all declarations, charters and other papers relating to life or health insurance, now on file in the office of the secretary of state, shall be transferred to the office of the comptroller, who shall give all certificates required concerning the same, on payment of the usual fees, as if the papers had been originally filed in his office. Every county clerk shall demand and receive for every paper filed in his office under this act, the sum of ten cents, to be accounted for and paid to the county treasurer as now provided with regard to other fees.

§ 17. It shall be the duty of the comptroller, whenever he shall have good reason to suspect the correctness of any annual statement, or that the affairs of any company making such statement are in an unsound condition, to cause an examination to be made into the affairs of any insurance company for the purposes named in this act, incorporated in this state, or doing business by its agencies in this state; and it shall be the duty of the officers or agents of any insurance company doing business in this state to cause their books to be opened for the inspection of the person or persons so appointed, and otherwise to facilitate such examination so far as it may be in their power so to do; and for that purpose the comptroller, or the person or the persons so appointed by him, shall have power to examine, under oath, the officers and agents of any company relative to the business of said company; and whenever the comptroller shall deem it for the interest of the public so to do, he shall publish the result of such investigation in the paper in which the state notices are directed to be inserted; and whenever it shall appear to the comptroller, from such examination, that the assets of any such company be insufficient to re-insure the outstanding risks, he shall communicate the fact to the attorney-general,

whose duty it shall then become to apply to the supreme court for an order requiring them to show cause why the business of such company should not be closed, and the court shall thereupon proceed to hear the allegations and proofs of the respective parties; and in case it shall appear to the satisfaction of the said court that the assets and funds of the said company are not sufficient, as aforesaid, the said court shall decree a dissolution of said company and a distribution of its effects, including the securities deposited in the hands of the comptroller. The supreme court shall have power to refer the application of the attorney-general to a referee, to inquire into and report upon the facts stated therein. And whenever it shall appear to the comptroller from the report of the person or persons appointed by him, that the affairs of any company not incorporated by the laws of this state, are in an unsound condition, he shall revoke the certificates granted in behalf of such company, and shall cause a notification thereof to be published in the state paper for four weeks, and the agent or agents of such company are after such notice, required to discontinue the issuing of any new policies. The expenses of any examination made under this section, shall be borne by the company so examined.

§ 18. Every violation of this act shall subject the party violating to a penalty of five hundred dollars for each violation, which shall be sued for and recovered in the name of the people, by the district attorney of the county in which the company or agent or agents so violating shall be situated, and one-half of such penalty when recovered, shall be paid into the treasury of such county, and the other half to the informer of such violation; and, in case of the non-payment of such penalty, the party so offending shall be liable to imprisonment for a period not exceeding six months, in the discretion of any court having cognizance thereof.

Penalty for violation of this act.

§ 19. When any company, transacting the business of insurance under either of the departments specified in the first section of this act, within the state of New York, shall desire to relinquish its business, the comptroller shall, on application of such company or association, under the oath of the president or principal officer and secretary or actuary, give notice of such intention in the paper in which the state notices are directed to be inserted, at least twice a week for six months; and after such publication he shall deliver up to such company or association the securities held by him, belonging to them, on being satisfied by the exhibition of the books and papers of such company or association, and on examination, to be made by himself or some competent person, not officer of any life insurance company in this state, to be appointed by him, and upon the oath of the president or principal officer, and the secretary or actuary of the same, that all debts and liabilities of every kind are paid and extinguished that are due or may become due upon any contract or agreement made with

Proceedings in case company wishes to relinquish its business

PART I.

any citizen of the United States. And the said comptroller may also, from time to time, deliver up to such company or association, or its assigns, any portion of said securities, on being satisfied in manner and form aforesaid, or by any other competent proof, that all the debts and liabilities of every kind that are due or may become due, upon any contract or agreement made with any citizen of this state by said company or association, are less than one-half of the amount of the portion of said securities he shall still retain.

Thus amended by Laws of 1859, ch. 263.

Charter to
continue
until re-
pealed.

§ 20. Every charter created by or under the laws of this state for the purposes aforesaid, shall continue until repealed.

31 B., 176.

Existing
companies
may avail
themselves
of this act.

§ 21. Any existing company incorporated by or authorized under the laws of this state, for the purposes mentioned in this act, may avail themselves of the provisions of this act, after publishing their intentions for six weeks in the state paper, and obtaining the consent of the majority of the trustees or directors, and complying with the third section of this act in relation to the filing and contents of the declaration therein referred to.

Parts of
acts of 1849
and 1851,
repealed.

§ 22. So much of the act of April tenth, eighteen hundred and forty-nine, and of April eighth, eighteen hundred and fifty-one, as relate to life insurance, is hereby repealed, but this section shall not affect any company incorporated under such act.

CHAP. 466.

AN ACT to provide for the incorporation of fire insurance companies.

PASSED June 25, 1853.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Corpora-
tions may
be formed.

§ 1. Any number of persons, not less than thirteen, may associate and form an incorporated company for the following purposes, to wit:

To make insurance on dwelling houses, stores and all kinds of buildings, and upon household furniture and other property, against loss or damage by fire, and the risks of inland navigation and transportation.

31 B., 176.

To effect re-
insurance.

§ 2. Any company organized under this act, shall have power to effect re-insurance of any risks taken by them respectively.

Declaration
to be filed.

§ 3. Such persons shall file in the office of the comptroller a declaration, signed by all the corporators, expressing their intention to form a company for the purpose of transacting

the business of insurance, as expressed in the first section of this act, which declaration shall also comprise a copy of the charter proposed to be adopted by them, and shall publish a notice of such their intention, once in each week, for at least six weeks, in a public newspaper in the county in which such insurance company is proposed to be located.

§ 4. The charter comprised in such declaration, shall set forth the name of the company, the place where the principal office for the transaction of its business shall be located; the mode and manner in which the corporate powers granted by this act are to be exercised; the mode and manner of electing trustees or directors, a majority of whom shall be citizens of this state, and of filling vacancies (but each director of a stock company shall be the owner in his own right of at least five hundred dollars' worth of the stock of such company, at its par value); the period for the commencement and termination of its fiscal year, and the amount of capital to be employed in the transaction of its business; and the comptroller shall have the right to reject any name or title of any company applied for, when he shall deem the name too similar to one already appropriated, or likely to mislead the public in any respect.

Charter,
what to
contain.

§ 5. No company formed under this act shall, directly or indirectly, deal or trade in buying or selling any goods, wares, merchandise, or other commodities whatever, excepting such articles as may have been insured by any company, and are claimed to be damaged by fire or water.

Company
not to deal
in goods,
wares, &c.

§ 6. No joint-stock company shall be incorporated under this act in the city and county of New York, nor in the county of Kings, nor shall any company incorporated under this act establish any agency for the transaction of business in either of said counties, with a smaller capital than two hundred thousand dollars, nor in any other county in this state with a smaller capital than fifty thousand dollars; nor shall any company formed for the purpose of doing the business of fire or inland navigation insurance, on the plan of mutual insurance, commence business, if located in the city of New York or in the county of Kings, nor establish any agency for the transaction of business in either of said counties, until agreements have been entered into for insurance with at least four hundred applicants, the premiums on which shall amount to not less than two hundred thousand dollars, of which forty thousand dollars at least shall have been paid in cash, and notes of solvent parties, founded on actual and bona fide applications for insurance, shall have been received for the remainder; nor shall any mutual insurance company in any other county of the state commence business until agreements have been entered into for insurance with at least two hundred applicants, the premiums on which shall amount to not less than one hundred thousand dollars, of which twenty thousand dollars at least shall have been paid in cash,

Joint-stock
company,
not to be
incorpora-
ted, until
certain pro-
visions are
complied
with.

chap 211
H.R. on 1877

chap 219 Am
1877. 337 Am
1878. 490 Am
1879 428
Am 1880
671 Am 1881

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and notes of solvent parties, founded on actual and bona fide applications for insurance, shall have been received for the remainder. No one of the notes received as aforesaid shall amount to more than five hundred dollars; and no two shall be given for the same risk, or be made by the same person or firm, except where the whole amount of such notes shall not exceed five hundred dollars; nor shall any such note be represented as capital stock unless a policy be issued upon the same within thirty days after the organization of the company, upon a risk which shall be for no shorter period than twelve months. Each of said notes shall be payable, in part or in whole, at any time when the directors shall deem the same requisite for the payment of losses by fire or inland navigation, and such incidental expenses as may be necessary for transacting the business of said company. And no note shall be accepted as part of such capital stock unless the same shall be accompanied by a certificate of a justice of the peace or supervisor of the town or city where the person making such note shall reside, that the person making the same is, in his opinion, pecuniarily good and responsible for the same, and no such note shall be surrendered during the life of the policy for which it was given. No fire insurance company organized under this act or transacting business in this state, shall expose itself to any loss on any one fire or inland navigation risk or hazard, to an amount exceeding ten per cent of its paid up capital.

Thus amended by Laws of 1862, ch. 367.

Books of
subscription to be
opened.

§ 7. It shall and may be lawful for the individuals associated for the purpose of organizing any company under this act, after having published the notice and filed their declaration and charter as required by the third section of this act, and also on filing in the office of the comptroller proof of such publication, by the affidavit of the publisher of such newspaper, his foreman or clerk, to open books for subscription to the capital stock of the company so intended to be organized, and to keep the same open until the full amount specified in the charter is subscribed; or in case the business of such company is proposed to be conducted on the plan of mutual insurance, then to open books to receive propositions, and enter into agreements in the manner and to the extent specified in the sixth section of this act.

Capital how
invested.

See Chap 242 laws
1863, 563 laws
1864 608
Laws 1871
493 Laws 1871
394 Laws 1876

§ 8. It shall be lawful for any fire insurance company organized under this act, or incorporated under any law of this state, to invest its capital, or the funds accumulated in the course of its business, or any part thereof, in bonds and mortgages on unincumbered real estate within the state of New York worth fifty per cent more than the sum loaned thereon, exclusive of buildings, unless such buildings are insured and the policy transferred to said company, and also in the stocks of this state, or stocks or treasury notes of the United States, and to lend the same or any part thereof, on

the security of such stocks or bonds or upon bonds and mortgages, as aforesaid, and to change and re-invest the same as occasion may from time to time require; but any surplus money, over and above the capital stock of any such fire and inland navigation insurance companies or of any fire insurance company incorporated under any law of this state, may be invested in or loaned upon the pledge of the stock, bonds, or other evidences of indebtedness of any institution incorporated under the laws of this state, except their own stock; provided, always, that the current market value of such stocks, bonds, or other evidences of indebtedness shall be at least ten per cent more than the sum so loaned thereon.

Thus amended by Laws of 1862, ch. 367.

§ 9. No company organized by or under this act shall purchase, hold or convey real estate, except for the purposes and in the manner herein set forth, to wit:

Real estate not to be held, except for certain purposes.

1. Such as shall be requisite for its convenient accommodation in the transaction of its business; or,

2. Such as shall have been mortgaged to it in good faith, by way of security for loans previously contracted, or for money due; or,

3. Such as shall have been conveyed to it in satisfaction of debts previously contracted in their legitimate business, or for money due; or,

4. Such as shall have been purchased at sales upon judgments, decrees or mortgages obtained or made for such debts; and it shall not be lawful for any such company to purchase, hold or convey real estate in any other case, or for any other purpose; and all such real estate as may be acquired, as aforesaid, and which shall not be necessary for the accommodation of such company in the transaction of its business, shall be sold and disposed of within five years after such company shall have acquired title thereto, unless the company shall procure a certificate from the comptroller of the state that the interests of the company will suffer materially by a forced sale thereof, in which event the sale may be postponed for such a period as the comptroller shall direct in said certificate; and the comptroller may also give such certificate and extend the time for holding real estate, in the like circumstances, on the application of any insurance company heretofore incorporated.

§ 10. The charter and proof of publication herein required to be filed by every such company shall be examined by the attorney-general, and, if found conformable to this act and not inconsistent with the constitution or laws of this state, shall be certified by him to the comptroller of the state, who shall thereupon cause an examination to be made, either by himself or by three disinterested persons specially appointed by him for that purpose, who shall certify, under oath, that the capital herein required of the company named in the charter, according to the nature of the business proposed to

Attorney-general to examine charter, &c.

The comptroller to examine affairs.

PART I.

be transacted by such company, has been paid in and is possessed by it in money, or in such stocks and bonds and mortgages as are required by the eighth section of this act; or, if a mutual company, that it has received and is in actual possession of the capital, premiums or bona fide engagements of insurance, or other securities, as the case may be, to the full extent and of the value required by the sixth section of this act; and the name and the residence of the maker of each premium note forming part of the capital, and the amount of such note, shall be returned to the comptroller; and the corporators or officers of such company shall be required to certify, under oath, that the capital exhibited to those persons is bona fide property of the company. Such certificates shall be filed in the office of the comptroller, who shall thereupon deliver to such company a certified copy of the charter and of said certificates, which, on being filed in the office of the clerk of the county where the company is to be located, shall be their authority to commence business and issue policies; and such certified copy of the charter and of said certificates may be used in evidence for or against said company with the same effect with the originals.

To make
by-laws.

§ 11. The corporators, or the trustees or directors, as the case may be, of any company organized under this act, shall have power to make such by-laws, not inconsistent with the constitution or laws of this state, as may be deemed necessary for the government of its officers and the conduct of its affairs, and the same, when necessary, to alter and amend; and they and their successors may have a common seal, and may change and alter the same at their pleasure.

Dividends.

*La. ch. 523 Aug
1864 1865*

§ 12. No fire insurance company, chartered by this state, shall hereafter divide to its stockholders, in any one year, an amount greater than one-tenth of its capital, unless such company shall have accumulated and be in possession of a surplus fund, in addition to the amount of its capital and of such dividend, equal to the whole amount received by such company for premiums on policies which shall be in force at the time of declaring such dividend; and such accumulated fund is hereby declared to be the unearned premiums of such company. This section shall not apply to any companies chartered by this state which are authorized to issue certificates of profits, and to redeem the same, from future earnings.

Exception.

Thus amended by Laws of 1862, ch. 367.

Notes to remain as security.

§ 13. All notes deposited with any mutual insurance company at the time of its organization, as provided in section six, shall remain as security for all losses and claims until the accumulation of the profits, invested as required by the eighth section of this act, shall equal the amount of cash capital required to be possessed by stock companies organized under this act, the liability of each note decreasing proportionately as the profits are accumulated; but any note which may have been deposited with any mutual insurance company subse-

quent to its organization, in addition to the cash premium on any insurance effected with such company, may, at the expiration of the time of such insurance, be relinquished and given up to the maker thereof or his representative, upon his paying his proportion of all losses and expenses which may have accrued thereon during such term. The directors or trustees of any such company shall have the right to determine the amount of the note to be given in addition to the cash premium by any person insured in such company; but in no case shall the note be more than five times the whole amount of the cash premium. And every person effecting insurance in any mutual company, and also their heirs, executors, administrators and assigns, continuing to be so insured, shall thereby become members of said corporation during the period of insurance, and shall be bound to pay for losses and such necessary expenses, as aforesaid, accruing in and to said company, in proportion to the amount of his deposit note or notes. The directors shall, as often as they deem necessary, after receiving notice of any loss or damage by fire sustained by any member, and ascertaining the same, or after the rendition of any judgment against said company for loss or damage, settle and determine the sums to be paid by the several members thereof, as their respective portion of such loss, and publish the same in such manner as they shall see fit, or as the by-laws shall have prescribed; and the sum to be paid by each member shall always be in proportion to the original amount of his deposit, note or notes, and shall be paid to the officers of the company within thirty days next after the publication of said notice; and if any member shall, for the space of thirty days after the publication of said notice, and after personal demand for payment shall have been made, neglect or refuse to pay the sum assessed upon him as his proportion of any loss, as aforesaid, in such case the directors may sue for and recover the whole amount of his deposit, note or notes, with costs of suit; but executions shall only issue for assessments and costs as they accrue, and every such execution shall be accompanied by a list of the losses for which the assessment is made. If the whole amount of deposit notes shall be insufficient to pay the loss occasioned by any fire or fires, in such case the sufferers insured by the said company shall receive, towards making good their respective losses, a proportional share of the whole amount of said notes, according to the sums by them respectively insured, but no member shall ever be required to pay for any loss occasioned by fire or inland navigation more than the whole amount of his deposit note.

Settlement
of losses.

25 B., 113; 21 B., 221.

Thus amended by Laws of 1854, ch. 369.

§ 14. It shall be lawful for any mutual insurance company, established in conformity with the provisions of this act, to unite a cash capital to any extent, as an additional security

To unite
cash capital
as additional
security.

PART I.

to its members, over and above their cash premiums and premium notes; provided, that such cash capital shall not be less than thirty thousand dollars, and which additional cash capital shall be loaned and invested as provided in the eighth section of this act; and the company may allow an interest on such cash capital, and a participation in its profits, and prescribe the liability of the owner or owners thereof to share in the losses of the company, and such cash capital shall be liable as the capital stock of the company in the payment of its debts; provided, that such cash capital shall in all cases be paid in at the organization of the company, and satisfactory evidence of that fact furnished to the comptroller. Any existing joint stock fire insurance company, and any company formed under this law, may (the written consent of the holders of three-fourths in amount of the stock first being had) permit the insured to participate in the profits of the business of such company, and provide how far any script, issued to the insured for such profits, shall be liable for the losses to be sustained; and any company so doing, whenever an amount not less than one hundred thousand dollars has been accumulated and script so issued therefor, may, with the written consent of the holders of three-fourths in amount of the stock, pay off and cancel an amount of the original cash capital equal to one-half of the accumulated profits, and so may continue from time to time until the whole amount of the original cash capital is paid off; provided, that before any portion of such capital stock shall be so paid off, proof shall be exhibited to the comptroller that an amount of accumulated profits has been realized, script issued therefor, and investments made thereof, pursuant to the provisions of the eighth section of this act, at least equal to double the amount so desired to be paid off and canceled, and the comptroller shall also first certify that he is satisfied with such proof.

Face of
policy,
what to
appear on.

§ 15. Every fire and inland navigation insurance company hereafter organized shall, if it be a mutual company, embody the word "mutual" in its title, which shall appear on the first page of every policy and renewal receipt; and every company doing business as a cash stock company shall, upon the face of its policy in some suitable manner, express that such policy is a stock policy.

Suits may
be main-
tained.

§ 16. Suits at law may be maintained by any corporation, formed under this act, against any of its members or stockholders for any cause relating to the business of such corporation; also suits at law may be prosecuted and maintained by any member or stockholder against such corporation for any losses which may have accrued, if payment is withheld more than thirty days after such losses may have become due; and any member or stockholder, not individually a party to such suits, may be a witness therein.

Trustees
and corpo-
rators to be

§ 17. The trustees and corporators of any company organized under this act, and those entitled to a participation of

the profits of such company, shall be jointly and severally liable for all debts or responsibilities of such company, until the whole amount of the capital of such company shall have been paid in and a certificate thereof recorded, as hereinbefore provided. Notes taken in advance of premiums under this act, are not to be considered debts of the company in determining whether a company is insolvent, but are to be regarded as assets of the company.

§ 18. Any existing joint-stock fire insurance company heretofore incorporated under the laws of this state, and any company organized under this act, having a capital of at least one hundred and fifty thousand dollars, may, without increasing its capital, at any time, within two years previous to the termination of its charter, after giving notice, at least once a week for six weeks successively in a newspaper published in the county where such company is located, of such intention, and with a declaration, under its corporate seal, signed by the president and two-thirds of its directors, of their desire for such extension, extend the term of its original charter to the time specified in the twenty-sixth section of this act, by altering and amending the same so as to accord with the provisions of this act, and filing a copy of such amended charter, with the declaration aforesaid, in the office of the Superintendent of the Insurance Department, whereupon the same proceedings shall be had as are required in the tenth section of this act; and any mutual insurance company heretofore incorporated or organized under any of the laws of this state, having surplus assets aside from premium and stock notes, sufficient to reinsure all its outstanding risks, after having given notice once a week for six weeks, of their intention, and of the meeting hereinafter provided for, in the state paper, and in a newspaper published in the county where such company is located, may, with the consent of two-thirds of the corporators or members present at any regular annual meeting, or at any special meeting duly called for the purpose, or with the consent in writing of two-thirds of the corporators or members of such company, and the consent also of three-fourths of the trustees or directors (unless otherwise provided in the charter), become a joint-stock company, by conforming its charter to and otherwise proceeding in accordance with this act; and every member of such company, on the day of said annual or special meeting, or the date of said written consent, shall be entitled to priority in subscribing to the capital stock of said company, for one month after the opening of the books of subscription to such capital stock, in proportion to the amount of cash premiums paid in by such members, on unexpired risks in force on the day of said annual or special meeting or the date of said written consent; and every company so extended or changed, shall come under the provisions of this act, in the same manner as if it had been incorporated originally under this act. Every mutual insu-

Existing
companies.

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rance company heretofore incorporated under the laws of this state, and doing business with a capital, in premium notes, of at least fifty thousand dollars, may, at any time, within two years previous to the termination of its charter, without increasing its capital, after giving notice, at least once a week for six weeks successively, in a newspaper published in the county where such company is located, of such intention, and with a declaration, under its corporate seal, signed by its president and two-thirds of its directors, of their desire for such extension, extend the term of its original charter to the time specified in the twenty-six section of this act, by altering and amending the same so as to accord with the provisions of this act, and filing a copy of such amended charter, with the declaration aforesaid, in the office of the Superintendent of the Insurance Department, whereupon the same proceedings shall be had as are required in the tenth section of this act, except as to its capital, which shall be certified to be in accordance with the provisions of this section, applicable to the reorganization of mutual insurance companies. Every mutual insurance company so extended shall, except as to the amount of its capital, come under the provisions of this act, in the same manner as if it had been incorporated originally under this act.

Thus amended by Laws of 1862, ch. 367.

Capital may
be increas-
ed.

*See Sec 6 Chap
9, Laws 1867
Chap 76
Act 1870
20 Feb 1871
327 Laws 1885*

§ 19. Any existing fire insurance company, and any company formed under this law, may at any time increase the amount of its capital stock, after notice given once a week for six weeks in the state paper, and in any newspaper published in the county where such company is located, of such intentions, with the written consent of three-fourths in amount of its stockholders, unless otherwise provided in its charter, or if a mutual company, with the unanimous consent of its trustees, unless otherwise provided in its charter, by altering or amending their charter in this respect, and filing a copy of their charter so amended, together with a declaration under its corporate seal, signed by its president and directors, of their desire so to do, with such written consent of three-fourths in amount of its stockholders, or the unanimous consent of the trustees as aforesaid to such increase, in the office of the comptroller, and upon the same proceedings being had as are required by the tenth section of this act.

Companies
formed
under act
of 1849,
brought
under this
act.

§ 20. Such companies as may have been incorporated or extended under the "Act to provide for the incorporation of insurance companies," passed April 10th, 1849, are hereby brought under all the provisions of this act, except that their capitals may continue of the amounts named in their respective charters during the existing term thereof, and are also entitled to all the privileges granted by said charters.

31 B., 116; 25 B., 113.

§ 21. All companies incorporated or extended under this act shall be deemed and taken to be bodies corporate and politic, in fact and in name, and shall be subject to all the provisions of the Revised Statutes, and acts supplemental thereto, in relation to corporations, so far as the same are applicable.

§ 22. It shall be the duty of the president or vice-president and secretary of each company organized under this act, or incorporated under any law of this state, annually, on the first day of January, or within one month thereafter, to prepare, under their own oath, and deposit in the office of the comptroller of this state, a statement of the condition of such company on the thirty-first day of December then next preceding, exhibiting the following facts and items, in the following form, namely:

To make
annual
statement
of condi-
tion of
company.

FIRST. The amount of the capital stock of the company.

SECOND. The property or assets held by the company, specifying,

1. The value, or nearly as may be, of the real estate held by such company.

2. The amount of cash on hand and deposited in banks to the credit of the company, specifying in what banks the same are deposited.

3. The amount of cash in the hands of agents and in course of transmission.

4. The amount of loans secured by bonds and mortgages, constituting the first lien on real estate, on which there shall be less than one year's interest due or owing.

5. The amount of loans on which interest shall not have been paid within one year previous to such statement.

6. The amount due the company on which judgments have been obtained.

7. The amount of stocks of this state, of the United States, of any incorporated city of this state, and of any other stocks owned by the company, specifying the amount, number of shares, and par and market value of each kind of stock.

8. The amount of stocks held thereby as collateral security for loans, with the amount loaned on each kind of stock, its par value and the market value.

9. The amount of assessments on stock or premium notes paid and unpaid.

10. The amount of interest actually due and unpaid.

11. The amount of premium notes on hand on which policies are issued.

THIRD. The liabilities of such company, specifying,

1. The amount of losses due and yet unpaid.

2. The amount of claims for losses resisted by the company.

3. The amount of losses incurred during the year, including those claimed and not yet due, and of those reported to the company upon which no action has been taken.

PART I.

4. The amount of dividends declared and due, and remaining unpaid.

5. The amount of dividends, either cash or script, declared but not yet due.

6. The amount of money borrowed and security given for the payment thereof.

7. The amount of all other existing claims against the company.

FOURTH. The income of the company during the preceding year, specifying,

1. The amount of cash premiums received.

2. The amount of notes received for premiums.

3. The amount of interest money received.

4. The amount of income received from other sources.

FIFTH. The expenditures during the preceding year, specifying,

1. The amount of losses paid during the year, stating how much of the same accrued prior and how much subsequent to the date of the preceding statement, and the amount at which such losses were estimated in such preceding statement.

2. The amount of dividends paid during the year.

3. The amount of expenses paid during the year, including commissions and fees to agents and officers of the company.

4. The amount paid in taxes.

5. The amount of all other payments and expenditures.

The comptroller is hereby authorized and empowered to address any inquiries to any insurance company or the secretary thereof, in relation to its doings or condition or any other matter connected with its transactions, and it shall be the duty of any company so addressed to promptly reply in writing to any such inquiries.

The statement of any company, the capital of which is composed in whole or in part of notes, shall, in addition to the foregoing, exhibit the amount of notes originally forming the capital and also what proportion of said notes is still held by such company and considered capital. The statement herein provided for shall be in lieu of any or all statements now required by any existing law or provision. Every fire insurance company organized under any law of this state failing to make and deposit such statement or to reply to any inquiry of the comptroller shall be subject to the penalty of five hundred dollars; and an additional five hundred dollars for every month that such company shall continue thereafter to transact any business of insurance.

It shall be the duty of the comptroller to cause to be prepared and furnished to each of the companies, and to the attorneys of companies incorporated by other states and foreign governments, printed forms of the statement required by this act, and he may, from time to time, make such changes in the form of such statements as shall seem to him best adapted to elicit from the companies a true exhibit of

their condition in respect to the several points hereinbefore enumerated.

It shall be the duty of the comptroller to cause the information contained in the statements required by this section to be arranged in a tabular form, and prepare the same in a single document for printing, which he shall communicate to the Legislature annually.

Thus amended by Laws of 1854, ch. 369.

§ 23. It shall not be lawful for any fire insurance company, association or partnership, incorporated by or organized under the laws of any other state of the United States or any foreign government, directly or indirectly to take risks or transact any business of insurance in this state, unless possessed of the amount of actual capital required of similar companies formed under the provisions of this act; and any such company desiring to transact any such business, as aforesaid, by an agent or agents in this state, shall first appoint an attorney in this state on whom process of law can be served, and file in the office of the Superintendent of the Insurance Department a certified copy of the vote or resolution of the directors appointing such attorney, which appointment shall continue until another attorney be substituted; in case any such insurance company shall cease to transact business in this state, according to the laws thereof, the agents last designated or acting as such for such corporation, shall be deemed to continue agents for such corporation for the purpose of serving process for commencing actions upon any policy or liability issued or contracted while such corporation transacted business in this state; and service of such process for the causes aforesaid upon any such agent shall be deemed a valid personal service upon such corporation; and also a certified copy of their charter or deed of settlement together with a statement, under the oath of the president or vice-president, and other chief officer, and secretary of the company for which he or they may act, stating the name of the company and place where located; the amount of its capital, with a detailed statement of its assets, showing the amount of cash on hand, in bank, or in the hands of agents; the amount of real estate, and how much the same is encumbered by mortgage; the number of shares of stock of every kind owned by the company, the par and market value of the same; amount loaned on bond and mortgage; the amount loaned on other security, stating the kind, and the amount loaned on each, and the estimated value of the whole amount of such securities; any other assets or property of the company; also stating the indebtedness of the company, the amount of losses adjusted and unpaid, the amount incurred and in process of adjustment; the amount resisted by the company as illegal and fraudulent; and any other claims existing against the company; also a copy of the last annual report, if any, made under any law of the state by

When foreign companies may take risks.

To appoint an attorney.

To file charter and statement.

PART I.
Capital to
be unim-
paired.

Deposit of
security.

Securities
may be
changed.

Obtain a
certificate.

And file the
same.

which such company was incorporated; and no agent shall be allowed to transact business for any company, whose capital is impaired to the extent of twenty per cent thereof, while such deficiency shall continue; and any company incorporated by or organized under any foreign government shall, in addition to the foregoing, deposit with the Superintendent of the Insurance Department for the benefit and security of policy holders residing in the United States, a sum not less than two hundred thousand dollars, in stocks of the United States or the state of New York in all cases to be, or to be made to be equal to a stock producing six per cent per annum, said stocks not to be received by said Superintendent at a rate above their par value or above their current market value; or in bonds or mortgages on improved unincumbered real estate in the state of New York, worth fifty per cent more than the amount loaned thereon; or in such stocks and securities as now are or which may hereafter be receivable by the Bank Department as security for circulating notes; the stocks and securities so deposited may be exchanged from time to time for other securities receivable as aforesaid, and so long as the company so depositing shall continue solvent and comply with the laws of this state, may be permitted by the said Superintendent to collect the interest or dividends on said deposit; the said deposit shall be in lieu of the investments in the name of trustees as heretofore required, and upon its being duly made either by the transfer of the trust funds or otherwise the trustees shall thereby be discharged from all liability; and where a deposit is made of bonds and mortgages accompanied by full abstracts of title and searches the fees for an examination of title by counsel to be paid by the party making the deposit shall not exceed twenty dollars for each mortgage; and the fees for an appraisal of property shall be five dollars to each appraiser, not exceeding two, besides expenses for each mortgage; nor shall it be lawful for any agent or agents to act for any company or companies referred to in this section, directly or indirectly, in taking risks or transacting the business of fire or inland navigation insurance in this state, without procuring from the Superintendent of the Insurance Department a certificate of authority stating that such company has complied with all the requisitions of this act which apply to such companies, and the name of the attorney appointed to act for the company; a certified copy of such certificate of authority, with statement, must be filed by the agent in the office of the clerk of every county where such company has agents, and shall be published in the paper in which the state notices are required to be inserted, four successive times after the filing of such statement as aforesaid; and within thirty days thereafter proof of such publication, by the affidavit of the publisher of such newspaper, his foreman or clerk, shall be filed in the office of the said Superintendent. The statements and evidences of invest-

ments required by this section shall be renewed from year to year in such manner and form as may be required by said Superintendent, with an additional statement of the amount of premiums received and losses incurred in this state during the preceding year, so long as such agency continues; and the said Superintendent, on being satisfied that the capital, securities and investments remain secure, as hereinbefore provided, shall furnish a renewal of his certificate, as aforesaid, and the agent or agents obtaining such certificate, shall file a certified copy of the same in the office of the clerk of the county in which such agency shall be established, within the month of January; the fees for each certificate of authority and certified copy thereof shall be five dollars. But any company organized under or incorporated by any foreign government may furnish and file such annual statements and evidences in the month of January in each year, made out for the year ending on the preceding thirtieth day of June if accompanied also by an annual supplementary statement, duly verified by the attorney or general agent of the company in this state showing the amount of risks written, premiums received, losses sustained, and taxes paid in this state for the year ending on the preceding thirty-first day of December, said supplementary statement shall also contain a description of the investments of such company in this country; and such other information as may be required by the said Superintendent. Any violation of any of the provisions of this section shall subject the party violating to a penalty of five hundred dollars for each violation, and of the additional sum of one hundred dollars for each month during which any such agent shall neglect to make such publication or to file such affidavits and statements as are herein required. Every agent of any fire insurance company shall, in all advertisements of such agency, publish the location of the company, giving the name of the city, town or village in which the company is located, and the state or government under the laws of which it is organized. The term agent or agents, used in this section shall include an acknowledged agent or surveyor, or any other person or persons, who shall, in any manner, aid in transacting the insurance business of any insurance company not incorporated by the laws of this state. The provisions of this section shall apply to all foreign companies, partnerships, associations and individuals, whether incorporated or not.

CHAP. XX.
Annual
statements.

Renewal
certificates.

Penalties

Place of
business.

Thus amended by Laws of 1862, ch. 367.

§ 24. It shall be the duty of the comptroller, whenever he shall deem it expedient so to do, to appoint one or more persons, not officers of any fire insurance company doing business in this state, to examine into the affairs of any fire insurance company incorporated in this state, or doing business by its agents in this state; and it shall be the duty of the officers or agents of any such company doing business in this

Comptrol-
ler to ap-
point one
or more
persons to
make exa-
minations.

PART I.

To publish
the result.

Proceed-
ings after
investiga-
tion.

Power of
the court.

Calls may
be made on
stockhold-
ers.

Liability of
directors.

state to cause their books to be opened for the inspection of the person or persons so appointed, and otherwise to facilitate such examination so far as it may be in their power to do; and for that purpose the comptroller, or person or persons so appointed by him, shall have power to examine, under oath, the officers and agents of any company relative to the business of said company; and whenever the comptroller shall deem it for the interest of the public so to do, he shall publish the result of such investigation in one or more papers in this state; and whenever it shall appear to the comptroller, from such examination, that the assets of any company incorporated in this state are insufficient to justify the continuance in business of any such company, he may direct the officers thereof to require the stockholders to pay in the amount of such deficiency within such period as he may designate in such requisition, or he shall communicate the fact to the attorney-general, whose duty it shall then become to apply to the supreme court for an order requiring them to show cause why the business of such company should not be closed, and the court shall thereupon proceed to hear the allegations and proofs of the respective parties; and in case it shall appear to the satisfaction of said court that the assets and funds of said company are not sufficient, as aforesaid, or that the interests of the public so require, the said court shall decree a dissolution of said company and a distribution of its effects. The supreme court shall have power to refer the application of the attorney-general to a referee, to inquire into and report upon the facts stated therein. Any company, receiving the aforesaid requisition from the comptroller, shall forthwith call upon its stockholders for such amounts as will make its capital equal to the amount fixed by the charter of said company; and in case any stockholder of said company shall refuse or neglect to pay the amount so called for, after notice personally given or by advertisement, in such time and manner as the comptroller shall approve, it shall be lawful for the said company to require the return of the original certificate of stock held by such stockholder, and in lieu thereof to issue new certificates for such number of shares as the said stockholder may be entitled to in the proportion that the ascertained value of the funds of the said company may be found to bear to the original capital of the said company; the value of such shares for which new certificates shall be issued to be ascertained under the direction of the comptroller, and the company paying for the fractional parts of shares; and it shall be lawful for the directors of such company to create new stock and dispose of the same, and to issue new certificates therefor, to an amount sufficient to make up the original capital of the company. And it is hereby declared that in the event of any additional losses accruing upon new risks, taken after the expiration of the period limited by the comptroller in the aforesaid requisition for the filling up of the

deficiency in the capital of such company, and before said deficiency shall have been made up, the directors shall be individually liable to the extent thereof. And if, upon such examination, it shall appear to the comptroller that the assets of any company chartered on the plan of mutual insurance under this act are insufficient to justify the continuance of such company in business, it shall be his duty to proceed in relation to such company in the same manner as is herein required in regard to joint stock companies; and the trustees or directors of such company are hereby made personally liable for any losses which may be sustained upon risks taken after the expiration of the period limited by the comptroller for filling up the deficiency in the capital, and before such deficiency shall have been made up. Any transfer of the stock of any company organized under this act, made during the pending of any such investigation, shall not release the party making the transfer from his liability for losses which may have accrued previous to the transfer. And whenever it shall appear to the comptroller, from the report of the person or persons appointed by him, that the affairs of any company not incorporated by the laws of this state are in an unsound condition, he shall revoke the certificates granted in behalf of such company, and shall cause a notification thereof to be published in the state paper for four weeks; and the agent or agents of such company is, after such notice, required to discontinue the issuing of any new policy, and the renewal of any previously issued.

Transfer of stock.

Foreign companies.

5 Ab., 444.

§ 25. Every penalty provided for by this act shall be sued for and recovered in the name of the people, by the district attorney of the county in which the company or the agent or agents so violating shall be situated, and one-half of said penalty, when recovered, shall be paid into the treasury of said county, and the other half to the informer of such violation; and in the case of the non-payment of such penalty, the party so offending shall be liable to imprisonment for a period not exceeding six months, in the discretion of any court having cognizance thereof. Such penalties may also be sued for and recovered in the name of the people by the attorney-general, and when sued for and collected by him shall be paid into the state treasury.

Penalty to be sued for.

So amended by Laws of 1862, ch. 367.

§ 26. All companies incorporated or extended under this act may provide, in their charters, for not more thirty years' duration; but the Legislature may at any time alter, amend or repeal this act, and provide for the closing up of the business and affairs of any company formed under it. Nothing herein contained shall be construed to prevent subsequent extensions of the charters of companies organized or extended under this act.

Duration of charter.

PART I.
Fees to be paid.

§ 27. There shall be paid by every association, company or agent, to whom this act shall apply, the following fees, to be appropriated towards paying the expenses of executing said act: For filing the declaration required by the third section, the certified copy of the charter required by the twenty-third section, or the papers required by the eighteenth or nineteenth sections, the sum of twenty dollars; for filing the annual statement, five dollars; for every certificate of agency, one dollar. And all declarations, charters or other papers relating to fire and inland navigation insurance companies, now on file in the office of the secretary of state, shall be transferred to the office of the comptroller, who shall furnish, on payment of the usual fees, all certificates in relation thereto, as if the same had been originally filed in his office. Every county clerk shall demand and receive, for every paper filed in his office under this act, the sum of ten cents, to be accounted for and paid over to the county treasury, as provided by law with regard to other fees.

Act of April
10, 1849, re-
pealed.

Exception.

§ 28. So much of the act entitled "An act to provide for the incorporation of insurance companies," passed April 10th, 1849, as relates to fire and inland navigation insurance, is hereby repealed; but such repeal shall not affect or apply to any company or association, which, at the date of the passage of the said act of June 25th, 1853, had filed in the office of the secretary of state, the declaration provided for by the third section of the aforesaid act of April 10, 1849.

So amended by Laws of 1853, ch. 528.

Act to take
effect &c.

§ 29. This act shall take effect immediately; except that those companies whose officers or agents have complied with the law of eighteen hundred and forty-nine, in making and publishing their respective statements, shall be permitted to continue to transact the business of insurance, without further statement, until the thirty-first day of January, eighteen hundred and fifty-four.

CHAP. 469.

AN ACT to amend the general law relative to the incorporation of insurance companies.

PASSED June 29, 1853.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Companies
subject to
taxation.

§ 1. Any mutual life insurance company in this state, incorporated previously to the passage of the general insurance law on the tenth day of April, eighteen hundred forty-nine, shall be subject to taxation in the same manner as if it were incorporated under said general law, with a capital of

one hundred thousand dollars as required by the sixth section of the said general law.

20 B., 86.

CHAP. 528.

AN ACT to amend an act entitled "An act to provide for the incorporation of fire insurance companies," passed June 25, 1853.

PASSED July 13, 1853.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. The twenty-eighth section of the act entitled "An act to provide for the incorporation of fire insurance companies," passed June 25, 1853, is hereby amended, &c.

Section amended.

See that act *ante*.

§ 2. Any persons who have heretofore filed a declaration, or commenced the publication of a notice of their intentions to form any joint stock fire insurance company, under the act entitled "An act to provide for the incorporation of insurance companies," passed April 10, 1849, may proceed to organize such companies under the act entitled "An act to provide for the incorporation of fire insurance companies," passed June 25, 1853, without filing any new declaration of intention, or publishing any new notice.

Companies. how formed

CHAP. 224.

AN ACT to enlarge the powers and duties of trustees in certain cases.

PASSED April 14, 1854.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. Whenever any insurance company or corporation shall have made an assignment of its property and effects to any person or persons, in trust for the benefit of all its creditors, and such trust shall from any cause have become vested in the supreme court, the person or persons appointed by the said court for the purpose of executing such trust shall have and possess all the powers and authority conferred, and be subject to all the obligations and duties imposed, in article third, title four, part third and chapter eight of the Revised Statutes, upon receivers appointed in case of the voluntary dissolution of a corporation; and shall, in addition thereto, have and possess the same power and authority conferred, and be subject to the same duties and obligations imposed upon receivers in certain cases, by the act entitled "An act

Powers of trustees.

PART I.

to facilitate the collection of debts against corporations," passed March nineteenth, eighteen hundred and fifty-two, and shall in all respects be subject to the control and direction of the said court.

CHAP. 75.

AN ACT relative to unclaimed dividends of Insurance Companies.

PASSED March 19, 1855.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Unclaimed
dividends
to be adver-
tised.

§ 1. Every insurance company or association for fire, marine, or life risks, conducted on the mutual principle or otherwise, now or hereafter incorporated or organised, or doing business, under any general or special law of this state, on or before the first day of September next, and annually thereafter, shall cause to be published for six successive weeks, in one public newspaper printed in the county in which such company or association may be located, and in the state paper, a true and accurate statement, verified by the oath of the treasurer or presiding officer, of all dividends and interest declared and payable upon any of the stock, bonds, or other evidence of indebtedness of said company or association, which, at the date of such statement, shall have remained unclaimed by any person or persons authorised to receive the same, for two years then next preceding; and the word "dividend," shall include all scrip issued or declared due for unpaid earnings or profits.

CHAP. 83.

AN ACT to declare the intention and make more certain an act entitled "An act to amend the general law relative to the incorporation of insurance companies," passed June twenty-ninth, eighteen hundred and fifty-three.

PASSED March 24, 1855; three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Mutual
companies,
how subject
to taxation.

§ 1. Any mutual life insurance company incorporated in this state previous to the passage of the general insurance law on the tenth day of April, eighteen hundred and forty-nine, shall be subject to taxation on the sum of one hundred thousand dollars for personal property and no more, and it is hereby declared that such was the intention, and it is the true construction of said act of June twenty-ninth, eighteen hun-

dred and fifty-three, in regard to any taxes imposed on said companies after said act took effect.

[See under the head of "Corporations, General Provisions," Laws of 1855, ch. 279, for "An act to facilitate the service of process on insurance and other corporations doing business in this state."]

CHAP. 28.

AN ACT in relation to Marine Mutual Insurance Companies incorporated under special charters or under general laws

PASSED February 16, 1857.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. Any marine mutual insurance company heretofore chartered by the legislature of this state under a special act, or any marine mutual insurance company now incorporated, or which may hereafter be incorporated under any general act or law of this state, shall have power to create or unite with its existing corporate funds, if it have any such funds, a cash capital of not less than three hundred thousand dollars, to be divided into shares of one hundred dollars each, to be issued to such persons as shall subscribe and pay for the same; which shares shall be transferable only on the books of the company, subject to such regulations as the trustees shall from time to time prescribe.

Authorized
to create
capital.

Shares
transferable

§ 2. The profits of the business of every corporation which shall avail itself of the provisions of this act, after setting apart therefrom a sufficient sum to cover the payment of seven per cent per annum upon the cash capital, and also the interest accruing upon any outstanding scrip or certificates of such company, shall be divided between the stockholders and others entitled by its charter or articles of association to participate in its profits, in the following manner, viz.: one-third thereof, or such other proportion not exceeding that rate as may be determined and agreed upon at the time when the subscriptions to the cash stock thereof are made, to be paid to the stockholders in cash, and the remainder thereof to the persons entitled by its charter or articles of association to participate in its profits, to whom scrip or certificates therefor shall be issued as provided in said charter or articles of association; but it shall be competent for such company to exclude from the computation of premiums entitled to participate in such profits, premiums or risks on which loss shall have happened. The fund represented by the scrip shall constitute a surplus or reserve of such company for the security and payment of losses, and be liable for any excess of losses, and expenses above the earned premiums of any year; each later annual issue of scrip always to be first reduced or wholly can-

Profits, how
to be divi-
ded.

Company to
exclude
certain
risks.

Surplus or
reserve
fund.

PART I.

Certificates
convertible
into stock.

celled before any previous annual issue is at all reduced, and all the issues of scrip to be liable to reduction and cancellation before the capital stock shall be encroached upon.

§ 3. Whenever the cash stock paid in shall amount to three hundred thousand dollars, or more, the trustees may by the vote of three-fourths of their whole number convert the certificates of profits, in whole or in part, into cash stock; commencing, if in part with the certificates of the year of earliest issue outstanding, and so on in succession, upon application therefor being made to the company by the holders thereof within such period of time, and at such a price, not exceeding its par value, and under such conditions and regulations as the trustees may fix and establish for that purpose, and whenever the cash stock shall amount to five hundred thousand dollars, or more, the trustees may by a like vote call in and redeem and cancel the outstanding certificates of profits and make the company wholly a cash stock company, dividing all its profits to the cash stock holders; and the trustees shall have power to make all necessary by-laws and regulations to conform to such changes in the business of the company.

Holders of
cash capital
entitled to
one vote.

§ 4. The holders of the cash capital paid in shall be entitled to one vote at all elections of said company for each share of said stock held by them respectively, such votes to be given either in person or by proxy; and no person shall be entitled to vote at any election by reason of being the holder of a policy issued after such cash capital is paid in, or of being the holder of any scrip or certificate of profits of such company issued after that time unless otherwise provided for in the articles of subscription to the said cash capital.

Capital not
to redeem
certificates.

§ 5. It shall not be lawful for such company, except as provided in the third section of this act, to apply any of its funds or profits to the redemption or payment of any certificate of profits, if by such payment the aggregate of its cash capital, and its accumulated profits together, shall be reduced below the amount which shall have been fixed by its by-laws or articles of association, and such aggregate amount shall not be fixed below the sum of one million of dollars, in addition to the amount of the cash stock thereof.

Amount of
aggregate
capital and
profits.

Subscribers
individual-
ly liable.

§ 6. Each subscriber to the cash capital aforesaid, shall be individually liable to the extent of his subscription for the dues of the corporation, until the shares of stock subscribed for by him shall have been paid in cash to the said corporation.

Act how to
be constru-
ed.

§ 7. This act shall not be so construed as to extend or prolong any special charters beyond the period for which the same were originally granted; or to apply to, or revive any charter under which any company is not now actually transacting business.

CHAP. 38.

AN ACT to amend an act entitled "An act to provide for the incorporation of insurance companies," passed April 10, 1849.

PASSED February 18, 1857.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

[Sections 1 and 2 amend sections 20 and 21 of Laws of 1849, ch. 308.]

§ 3. This act shall take effect immediately, and all the provisions herein contained shall apply to all existing companies organized for the purposes of marine insurance under said act, passed April 10, 1849, and to all proceedings heretofore had or now pending and in progress for the purpose of uniting a cash capital to the other funds thereof.

Provision
extended to
existing
companies.

CHAP. 504.

AN ACT to provide for an investigation into the origin of fires in certain cases.

PASSED April 15, 1857; three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. Whenever it shall be made to appear by the affidavit of a credible witness, that there is ground to believe that any building has been maliciously set on fire, or attempted to be, any coroner, sheriff or deputy sheriff of the county in which such crime is supposed to have been committed, to whom such affidavit shall be delivered, and who shall be requested in writing by the president, secretary, or agent of any insurance company, or by two or more reputable freeholders to investigate the truth of such belief, shall do so without delay.

What offi-
cers to in-
vestigate.

§ 2. For this purpose he shall possess all the powers conferred upon coroners for the purpose of holding inquests by the first four sections of article first of title seventh of chapter second of part fourth of the Revised Statutes.

Powers of
officer.

§ 3. The jury, after inspecting the place where the fire was or was attempted, and after hearing the testimony, shall deliver to the officer holding such inquest their inquisition in writing, to be signed by them, in which they shall find and certify how, and in what manner such fire happened or was attempted, and all the circumstances attending the same, and who were guilty thereof, either as principal or accessory, and in what manner. But if such jury shall be unable to ascertain the origin and circumstances of such fire, they shall find and certify accordingly.

Jury.

PART I.
Witnesses
to be bound
over.

§ 4. If the jury find that any building has been designedly set on fire, or has been attempted so to be, the officer holding such inquest shall bind over the witnesses to appear and testify at the next criminal court, at which an indictment for such offence can be found, that shall be held in the county. And in such case, if the party charged with any such offence be not in custody, the officer holding such inquest shall have power to issue process for his arrest in the same manner as justices of the peace.

Accused to
be exam-
ined.

§ 5. The officer issuing such process shall have the same power to examine the party arrested as is possessed by a justice of the peace, and shall in all respects proceed in like manner.

Testimony
to be re-
duced to
writing.

§ 6. The testimony of all witnesses examined before the jury under this law, shall be reduced to writing by the officer holding the inquest, and shall be returned by him, together with the inquisition of the jury, and all recognizances and examinations taken by such officer, to the next criminal court of record that shall be held in such county.

Pay of off-
cers.

§ 7. The compensation of the officers holding such inquest, and their actual and necessary expenses under this act, shall be fixed, audited, and paid in the same manner as the compensation and actual and necessary expenses of coroners are now provided for by law.

§ 8. This act shall not extend to the cities of New York, Brooklyn and Buffalo.

CHAP. 548.

AN ACT to amend an act entitled "An act further to amend the acts in relation to Insurances on property in this State, made by individuals and associations unauthorized by law," passed March thirtieth, eighteen hundred and forty-nine.

PASSED April 16, 1857.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Certain
laws repeal-
ed as to
New York.

§ 1. Sections one, two, three and four of an act entitled "An act further to amend the acts in relation to insurances on property in this state, made by individuals and associations unauthorised by law," passed March thirty, eighteen hundred and forty-nine, so far as the said sections are applicable to the city and county of New York, but no further, are hereby repealed, and the following ten sections are substituted therefor:

Companies
subject to
taxation.

Provided, however, that any corporation or association created by, or organized under the laws of any government other than the states of this Union, and having assets, funds or capital, not less in amount than one hundred and fifty

thousand dollars, invested in this state, shall be liable to taxation upon such assets, funds or invested capital, as the same is levied or assessed yearly by law, which tax shall be paid as follows: such an amount thereof as would be equal to two per cent upon its gross premiums received for insurances upon property in the city of New York, shall be paid annually as hereinbefore provided to the treasurer of the fire department of the city of New York, and the residue of said tax requisite to make up the full amount of taxation upon its capital as hereinbefore provided, shall be paid to the mayor, aldermen and commonalty of the city of New York, as in the case of ordinary taxation; and the payments so made as aforesaid, shall exempt such corporation or association making the same from any and all further taxation upon its premiums, capital or assets; and whenever such capital shall be reduced below said sum of one hundred and fifty thousand dollars, or withdrawn entirely, then and in either event such corporation or association shall be liable to pay the tax upon its premiums as heretofore provided in this act.

Thus amended by Laws of 1858, ch. 255; 20 B., 68; 3 E. D. S., 440.

§ 1. There shall be paid to the treasurer of the fire department of the city of New York, for the use and benefit of said fire department, on the first day of February, in each year, by every person who shall act in the city and county of New York as agent for or on behalf of any individual or association of individuals, not incorporated by the laws of this state, to effect insurances against losses or injury by fire in the city and county of New York, although such individuals or association may be incorporated for that purpose by any other state or country, the sum of two dollars upon the hundred dollars, and at that rate upon the amount of all premiums which during the year ending on the next preceding first day of September, shall have been received by such agent or person, or received by any other person for him, or shall have been agreed to be paid for any insurance against loss or injury by fire in the city and county of New York, effected or agreed to be effected, or promised by him as such agent.

Payments
to fire de-
partment.

§ 2. Every person who shall act in the city and county of New York as agent as aforesaid, shall, on the first day of February, in each year, render to the said treasurer of the fire department a just and true account, verified by his oath, of all such premiums which, during the year ending on the first day of September, preceding, shall have been received by him, or by any person for him, or which shall have been agreed to be paid, for any such insurance effected or agreed to be effected, or promised by him.

Annual re-
ports to be
made.

§ 3. No person shall, as agent or otherwise, affect or agree to effect, or procure to be effected, any insurance upon which the duty above mentioned is required to be paid, until he shall have executed and delivered to the said treasurer an undertaking, under seal, to the fire department of the city of New

Agents to
give bonds.

PART I.

York, with such sureties as the said treasurer shall approve, that he will annually render to the said treasurer, on the first day of February, in each year, a just and true account, verified by his oath, of all such premiums, which, during the year ending on the first day of September, preceding, shall have been received by him, or by any person for him, or which shall have been agreed to be paid for any such insurance effected, or agreed to be effected, or promised by him, and that he will annually, on the first day of February in each year, pay to the said treasurer two dollars upon every hundred dollars, and at that rate upon the amount of such premiums.

And to re-
new them.

§ 4. Whenever, by reason of the failure of the sureties, or either of them, or for any other cause, an undertaking given under the last preceding section, shall or may be deemed insufficient by the said treasurer to secure a return of the account and the payment of the duty aforesaid, or either of them, the said treasurer, at his election, but not oftener than once in each year, may require such undertaking to be renewed.

Penalty for
omission.

§ 5. Every person who shall effect, agree to effect, promise or procure any insurance mentioned in the first four sections of the said act as hereby amended, without having executed and delivered the undertaking required by the third section of said act as hereby amended, shall, for each offence, forfeit one thousand dollars, for the use of the said fire department; and every person who shall have been required by the said treasurer to renew his undertaking, pursuant to the fourth section of said act as hereby amended, who shall effect, agree to effect, promise or procure any such insurance, without having executed and delivered the renewed undertaking, required by said last mentioned fourth section, shall for each offence forfeit one thousand dollars, for the use of the said fire department.

Demand for
report.

§ 6. It shall be lawful for the said treasurer of the fire department, on or after the first day of February in each year, by written or printed demand, signed by him, to require from every person who shall act in the city and county of New York, as agent, as aforesaid, the account provided for in the second section of said act, as hereby amended, and payment of the duty provided for in the first section thereof; such demand may be delivered personally to such agent, or at his office or place of business to any person having charge thereof, or at his residence to any person of suitable age. And every such agent who shall, for ten days after such demand, neglect to render the account or to pay the duty demanded, or either of them, shall forfeit fifty dollars, for the use of the said fire department; and he shall also forfeit for their use twenty-five dollars in addition for every day that he shall so neglect after the expiration of said ten days, and such additional pen-

alty may be computed and recovered up to the time of the trial of any suit for the recovery thereof.

§ 7. Every person who shall act in the city and county of New York, as agent, as aforesaid, shall, on the first day of February, in each year, or within ten days thereafter, and as often in each year as he shall change his place of business in the said city, report in writing, under his proper signature, to the comptroller of the state, and also to the treasurer of the said fire department, the street and the number thereof in the said city, of his place of business as such agent, designating in such report the individual or individuals and association or associations for which he shall be such agent. And in case of default in any of these particulars, such person shall forfeit, for every offence, the sum of one thousand dollars, for the use of the said fire department.

To report
change of
place.

§ 8. The duty provided to be paid by the first section of said act as hereby amended, the damage for any breach of the undertakings, or either of them, provided for in the third and fourth sections thereof, and the pecuniary penalties imposed by said act as hereby amended, or any or either of them, may be sued for and recovered, with costs of suit, in any court of record within this state, by the fire department of the city of New York, in their own name and for their own use.

Duties and
penalties
may be sued
for.

§ 9. The defendant in any action to be brought for the recovery of any penalty incurred, or any duty or sum of money payable under said act, as hereby amended, may be arrested, if he is not a resident of this state, or is about to remove therefrom. An order for the arrest of the defendant must be obtained from a judge of the court in which the action is brought, or from a county judge. The order shall be made when it shall appear to the judge by affidavit, that a sufficient cause of action exists under said act, as hereby amended, and that the defendant is not a resident of this state, or is about to remove therefrom.

Defendant
may be ar-
rested.

§ 10. The provisions of chapter one of title seven, of an act entitled "An act to amend the act entitled 'An act entitled to simplify and abridge the practice, pleading and proceedings of the courts of this state,' passed April twelfth, eighteen hundred and forty-eight," passed April eleventh, eighteen hundred and forty-nine, and which chapter is entitled "Arrest and bail," from and including section one hundred and eighty-two to the end of said chapter, shall apply to any arrest under the ninth section of said act, as hereby amended, and to the proceedings thereupon.

Code made
applicable.

§ 2. The repeal, by the first section of this act, shall not affect any prosecution or action commenced, or penalty, duty or liability incurred, or cause of action accrued prior to the passage of this act, but every such action or prosecution may lawfully proceed, and every such penalty, duty or liability may be demanded and recovered as if the sections one, two,

Effect of re-
peal.

PART I.

three and four, repealed as aforesaid, had remained in full force.

CHAP. 366.

AN ACT to establish an Insurance Department.

PASSED April 15, 1859; three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Department
created.

§ 1. There is hereby established a separate and distinct department, which shall be charged with the execution of the laws heretofore passed or that may be hereafter passed in relation to insurance.

Name of
office.

How ap-
pointed.
Salary.

Clerks.

§ 2. The chief officer of said department shall be denominated the superintendent of the insurance department. He shall be appointed by the governor, by and with the advice of the senate, and shall hold his office for the term of three years. He shall receive an annual salary of two thousand five hundred dollars, to be paid quarterly. He shall employ, from time to time, the necessary clerks to discharge such duty as he shall assign them, whose compensation shall be paid to them monthly on his certificate, and upon the warrant of the comptroller. He shall appoint one of the said clerks to be his deputy, who shall possess the powers and perform the duties attached by law to the office of principal during a vacancy in such office and during the absence or inability of his principal. Within fifteen days from the time of notice of their appointment, respectively, the superintendent and his deputy shall take and subscribe the oath of office prescribed by the constitution and file the same in the office of the secretary of state, and the said officers shall be, in all respects, subject to the provisions of the sixth title of chapter five of the first part of the Revised Statutes, so far as the same may be applicable; and the said superintendent of the insurance department shall give to the people of the state of New York a bond, in the penalty of ten thousand dollars, with two sureties, to be approved of by the comptroller, conditioned for the faithful discharge of the duties of his office; and the said superintendent shall not, either directly or indirectly, be interested in any insurance company.

Bond.

Amended, see Laws of 1861, ch. 326.

Powers of
superinten-
dent.

§ 3. The superintendent of the insurance department shall possess all the powers, perform all the duties, and be subjected to all the obligations and penalties now conferred by law upon the comptroller of this state, or to which the comptroller is subject in relation to insurance companies and the formation thereof, under the laws relating thereto, so that every power and duty thereby conferred on the comptroller,

shall, from and after the appointment of such superintendent, be transferred to and conferred upon the said superintendent. In addition to the requirements of the Laws of eighteen hundred and fifty-three, relating to the annual reports relative to insurance, the superintendent shall be required to report the names and compensation of the clerks employed by him, and the whole amount of expenses of the department during the year, such report shall be made by or before the first day of March, and fifteen hundred copies for the use of the superintendent and the usual number of copies for the use of the legislature shall be printed by the printer employed to print legislative documents.

Annual reports.

§ 4. The said superintendent, with the approval of the governor, shall devise a seal, with suitable inscriptions, for his office, a description of which, with a certificate of approval by the governor, shall be filed in the office of the secretary of the state, with an impression thereof, which seal shall thereupon be and become the seal of office of the superintendent of the insurance department, and the same may be renewed whenever necessary. Every certificate, assignment or conveyance executed by the said superintendent in pursuance of any authority conferred on him by law, and sealed with his said seal of office, shall be received as evidence, and may be recorded in the proper recording offices in the same manner and with the like effect as a deed regularly acknowledged or proved before an officer authorized by law to take the proof or acknowledgment of deeds; and all copies of papers in the office of the said superintendent, certified by him and authenticated by the said seal, shall in all cases be evidence equally and in like manner as the original. An impression of said seal directly on paper, shall be as valid as if made on a wafer or wax.

Seal.

Certificate when evidence.

§ 5. All books, papers and documents, securities, stocks, bonds and mortgages, and all other papers whatever in the comptroller's office and in the office of the secretary of state, relating to the business of insurance shall, on demand, be delivered and transferred to the superintendent of the insurance department, and be and remain in his charge and custody.

Books, papers, &c., to be transferred.

§ 6. There shall be assigned to the said superintendent, by the trustees of the state hall, suitable rooms therein for conducting the business of said department, and the said superintendent shall from time to time furnish the necessary furniture, stationery, fuel, lights, and other proper conveniences for the transaction of the said business, the expenses of which shall be paid on the certificate of the superintendent and the warrant of the comptroller.

Office for department.

§ 7. There shall be paid by every company, association, person or persons, or agent, to whom this act shall apply, the following fees towards paying the expenses of executing this act: For filing the declaration now required by law, or the

Insurance companies to pay, &c.

PART I.

certified copy of a charter also now required, the sum of thirty dollars ; for filing the annual statement now required, twenty dollars ; for every certificate of agency and copy of statement, three dollars ; for every copy of paper filed in his office, the sum of ten cents per folio, and for affixing the seal of said office to such copy, and certifying the same, one dollar. In case the expenses of said department shall exceed the amount of fees collected under this act, and paid into the state treasury (exclusive of the tax upon marine premiums), the excess of such expenses shall be annually assessed by the superintendent pro rata upon all the stock insurance companies of this state ; and the said superintendent is hereby empowered to collect such assessments and pay the same into the state treasury.

§ 8. All laws or parts of laws inconsistent with this act are hereby repealed.

CHAP. 328.

AN ACT to amend an act entitled "An act to provide for the incorporation of life and health insurance companies, and in relation to agencies of such companies," passed June twenty-four, eighteen hundred and fifty-three, and the amendment thereto, passed July eighteen, eighteen hundred and fifty-three.

PASSED April 12, 1860.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

[Sec. 1 amends sec. 6 of the Laws of 1853, ch. 463.]

[Sec. 2 amends sec. 8 of the same act.]

Existing
companies
may re-or-
ganize.

§ 3. Any company organized under the acts to which this is an amendment having first obtained the consent of the superintendent of the insurance department thereto in writing may by a vote of a majority of their directors, accept the provisions of this act or any of them and amend their charter to conform with the same.

CHAP. 92.

AN ACT in relation to Inland Navigation Insurance Companies.

PASSED March 27, 1861.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

May take
risks on
lakes, riv-
ers and
canals.

§ 1. Any and all insurance companies, incorporated under the provisions of the act entitled "An act to provide for the incorporation of insurance companies," passed April tenth,

eighteen hundred and forty-nine; or under the provisions of the act entitled, "An act to provide for the incorporation of fire insurance companies," passed June twenty-fifth, eighteen hundred and fifty-three, which shall, in the declaration and charter provided to be filed by the third sections of such acts respectively, have expressed an intention to make insurance, or which shall have power to make insurance, against loss or damage by the risks of inland navigation or transportation, shall have power to make insurance upon vessels, boats, cargoes, goods, merchandise, freights and other property against loss and damage by all or any of the risks of lake, river, canal and inland navigation and transportation.

§ 2. Any insurance company hereafter incorporated under the last of said acts, may have the powers aforesaid, if in its charter it shall express its intent to exercise such powers.

*Ib. as to
new compa-
nies*

CHAP. 326.

AN ACT to amend the act to establish an insurance department, passed April fifteen, eighteen hundred and fifty-nine, and authorizing insurance companies to change the dates of the termination of their fiscal year, in certain cases.

PASSED April 20, 1861; three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. The second section of the act to establish an insurance department, is hereby amended by striking out from the fifth and sixth lines thereof, the following words: "He shall receive an annual salary of two thousand, five hundred dollars," and inserting the words: "He shall receive the same annual salary as the superintendent of the bank department."

*Salary of
superinten-
dent.*

§ 2. All fire, marine and life insurance companies now required, or which may hereafter be required, to make annual statements to the insurance department, for the year ending on the last day of December, are hereby authorized and empowered to change the date of the termination of their fiscal year, to the thirty-first day of December; and all statements, reports, dividends and balances now required by law to be made, and all other acts required to be done by said companies, at the termination of their fiscal year or years, or within a limited time thereafter, may be made out and done on the last day of December, and within the same period thereafter, in lieu of such other days of the year, or periods of time, as are now designated by their charter or otherwise.

*Time of
making re-
ports and
statements
by compa-
nies.*

CHAP. 334.

AN ACT requiring foreign insurance companies to make and file annual statements of their condition and affairs.

PASSED April 26, 1861.

The People of the State of New York, represented in Senate and Assembly, do enact as follows :

To make reports and statements.

§ 1. All foreign insurance companies, associations, corporations, partnerships and individuals, transacting the business of fire, marine or life insurance, or any other kind of insurance in this state, shall make annual statements of their condition and affairs to the insurance department, in the same manner and in the same form as similar companies organized under the laws of this state.

Penalty for neglect.

§ 2. In case of neglect or refusal to make such annual statement as aforesaid, all persons acting in this state as agents or otherwise in transacting the business of insurance for said companies, corporations, associations, partnerships or individuals, shall be subject to the same penalties provided by law in case of the failure of any insurance company, organized under the laws of this state, to make an annual statement as now provided by law.

CHAP. 367.

AN ACT to amend an act entitled "An act to provide for the incorporation of fire insurance companies," passed June twenty-fifth, eighteen hundred and fifty-three.

PASSED April 19, 1862; three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows :

[The first five sections of this act amend ch. 466 of Laws of 1853, and the amendments are there incorporated.]

Lien on stocks and profits.

§ 6. Any fire or fire and marine insurance company, chartered by this state, may have a lien, by passing a by-law to that effect upon the stock or certificate of profits owned by any member for any debt hereafter to become due the said company for premiums, by stating that the said stock is subject to any such lien upon the certificates of stock or profits, and such lien may be waived in writing by the consent of the president of said company upon the transfer of any such stock.

CHAP. 412.

AN ACT to facilitate the closing up of insolvent and dissolved mutual insurance companies.

PASSED April 21, 1862.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. If any controversy or disagreement shall arise between the receiver of an insolvent or dissolved mutual insurance company, in the settlement of any demand or claim against any member or stockholder of the company of which he is receiver, or any other person, or if after personal demand for payment of such demand or claim shall have been made, and the payment of the sum claimed be neglected or refused, the same may be referred to a sole referee who may be agreed upon by the receiver and the person against whom such demand or claim is made, by a writing to that effect signed by them, or upon application to any justice of the supreme court residing in the district where such receiver keeps his office as herein stated, and all controversies relating to such receiver's business may be referred to one referee in the discretion of the court; such referee shall be appointed upon ten days' notice to the adverse party.

Referee
may be ap-
pointed.

§ 2. The referee so appointed, shall proceed in a summary manner to hear the proofs and allegations of the parties upon written or oral pleadings, and shall have the same powers and be subject to the same duties and obligations, and shall receive the same compensation as referees appointed by the supreme court in personal actions pending therein, and upon his report a judgment may be entered in said court and be the judgment of said court, in the same manner; and the supreme court, may, on appeal from said judgment to the general term, set aside the report of the said referee; but no appeal from such judgment shall suspend or delay the execution thereon, unless there shall be filed with the notice of appeal to the clerk of the court, a certificate of a justice of the supreme court, to the effect that there is probable error in the said judgment, nor unless security be given to the satisfaction of said justice for the payment of said judgment and the costs of the appeal, if said judgment be affirmed.

Proceed-
ings before
referee.

§ 3. All controversies before said referee shall be brought to a hearing upon notice to the adverse party, the same as now required by the rules and practice of the supreme court.

Notice of
hearing.

§ 4. The referee so appointed, at any time after his appointment and without an issue of fact joined, shall have the same power and authority to issue a commission to examine witnesses relating to any controversy before him as a justice of the peace now has.

Commis-
sion to ex-
amine wit-
ness.

PART I.
Power of
supreme
court.

Disburse-
ments.
Saving
clause.

§ 5. The supreme court shall have power to refer all actions now pending therein, wherein any such receiver is a party, and where any controversy arises as mentioned in the first section of this act, such reference shall in no way prejudice the proceedings already had.

§ 6. The prevailing party shall recover the disbursements to the controversy only. This act shall not affect the costs already made in actions pending, and the costs now incurred in actions pending shall abide the event of the action, not to exceed twenty dollars in cases where no judgment has been entered. Costs on appeal may be allowed in the discretion of the court, and may be absolute or directed to abide the event of the action.

CHAP. 259.

AN ACT to amend an act entitled "An act to establish a Metropolitan police district, and to provide for the government thereof," passed April fifteenth, eighteen hundred and fifty-seven.

PASSED April 10, 1860; three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Act of 1857
amended.

§ 1. The act entitled "An act to establish a Metropolitan police district, and to provide for the government thereof," passed April fifteenth, eighteen hundred and fifty-seven, is hereby amended so as to read as follows:

Metropol-
itan police
district.

§ 2. The counties of New York, Kings, Westchester and Richmond, and the towns of Newtown, Flushing and Jamaica, in the county of Queens, are hereby constituted and territorially united for the purposes of police government and police discipline therein, into one district, which shall be known as and called the Metropolitan Police District of the State of New York.

15 N. Y., 532; 25 B., 532.

Powers and
duties, in
whom
vested.

§ 3. The powers and duties connected with and incident to the police government and discipline of the said district, shall be, as is hereinafter more especially provided for, vested in and exercised by a board of Metropolitan police, commissioners of Metropolitan police, and by a Metropolitan police force, composed of a superintendent of Metropolitan police force, inspectors of Metropolitan police force, captains of Metropolitan police, sergeants of Metropolitan police, and patrolmen of Metropolitan police.

Three com-
missioners
to be ap-
pointed.

§ 4. On or before the tenth day of April, A. D. eighteen hundred and sixty, and thereafter from time to time as may become requisite, the governor shall nominate, and by and with the advice and consent of the senate, shall appoint, from

among the electors of the Metropolitan police district, three commissioners of Metropolitan police, who shall constitute the board of Metropolitan police, and two of them shall form a quorum for the transaction of business. The governor shall have power to fill up any vacancy or vacancies that may happen in such board during the recess of the senate, by appointing a commissioner or commissioners who shall hold office until appointment shall be made for the remainder of the unexpired term, in the manner hereinbefore provided. Any one of the commissioners may be at all times removed by the governor under the provisions of statutes relating to the removal from office of sheriffs, which provisions are hereby extended so as to relate to each one of the said commissioners.

5 Ab., 241.

§ 5. The said three commissioners, after having been duly appointed under this section, shall assemble together in the office of the secretary of state, and there proceed to draw lots for three terms of office expiring respectively on the first days of April, in the years eighteen hundred and sixty-two, eighteen hundred and sixty-four, and eighteen hundred and sixty-six. At the expiration of each of the said respective terms, the full term succeeding shall be one of six years.

Commissioners to draw lots for terms of office.

§ 6. Any one of the said commissioners who shall, during his term of office, accept or hold any other place of public trust or civil emolument, or who shall, during his term of office, be publicly nominated for any office elective by the people, and shall not, within ten days succeeding the same, publicly decline the said nomination, shall be in either case deemed thereby to have resigned his commission to the governor, and to have vacated his office, and the governor shall proceed as in case of vacancy.

Commissioners not to except any other office.

§ 7. Upon the said three terms of office having been determined as aforesaid, by lot, and a certificate of the result attested by each commissioner having been filed in the office of the secretary of state, there shall be issued to each commissioner from said office the proper commission of appointment to office, for the term so drawn by lot, and each commissioner shall, on receipt thereof, take and subscribe before the secretary of state, for deposit in his office, the oath required by the constitution for judicial officers.

Commission of appointment to be issued

§ 8. The said three commissioners appointed under this section, shall then take the places of the five commissioners of police of the said the Metropolitan police district, now fulfilling office therein under the act hereby amended, and the terms of office of each of the said five commissioners shall thereupon be at an end. The board of Metropolitan police, composed of the said three commissioners, and of no other officers or persons, shall succeed and take the place of the board of police then existing.

Commissioners appointed under this act to take the place of those now in office.

§ 9. The said "the Metropolitan police district" shall be divided by the board of Metropolitan police into precincts,

District to be divided into precincts.

PART I.

not exceeding forty in the whole number thereof, and to each precinct shall be assigned a captain of Metropolitan police, and as many sergeants and patrolmen of the Metropolitan police force as the said board may deem sufficient. Any number of said precincts may be joined into a sub-district by the said board and assigned to the charge of an inspector of police force. Any number of precincts may be likewise joined into surgical sub-districts and assignments be made thereto of surgeons of police by the said board. In precincts within the county towns of Kings, or the towns of Newtown, Flushing and Jamaica, in the county of Queens, or in the counties of Richmond or Westchester, respectively, the said board may appoint therein any patrolman as acting sergeant in command of such precinct, with powers of captain, under the rules and regulations of the board, but without increase of pay.

Board of
police to
fill vacan-
cies.

§ 10. The board of Metropolitan police, whenever vacancies occur or the same becomes requisite, shall appoint the superintendent of Metropolitan police force, and the inspectors of Metropolitan police force, not exceeding four, and the captains of Metropolitan police, not exceeding forty, and the sergeants of Metropolitan police, not exceeding one hundred and sixty, and the patrolmen of Metropolitan police to the number authorized or restricted by this act. The board of Metropolitan police shall promulgate all regulations and orders through the superintendent of police, who shall be the executive head of the whole police force of the Metropolitan district, and who shall have the direction and control of said force, subject to the rules and regulations of the board of police.

Quota of
patrolmen.

§ 11. The quota of patrolmen for the county of New York, and whose services are to be paid for by the contribution of said county to the Metropolitan police fund, shall not exceed one thousand four hundred, unless the board of supervisors of said county shall by resolution determine an additional number to be necessary. The quota of patrolmen for the city of Brooklyn, and whose services are to be paid for by the contribution of said city to the general police fund, shall not exceed two hundred, unless the common council thereof shall by resolution authorize the board of Metropolitan police to appoint an additional specified number. Such resolutions may be passed from time to time by either the said board of supervisors or the said common council.

Voters of
towns and
counties
may deter-
mine as to
number of
patrolmen
in their
counties,
towns and
villages.

§ 12. The qualified voters of each of the towns in the respective counties of Kings, Westchester and Richmond, and of each of the towns, respectively, of Newtown, Flushing and Jamaica, in the county of Queens, and the qualified voters of any incorporated village within the said the Metropolitan police district, shall have power at any annual or special town meeting or village election, to vote and determine if a regular patrolman, or any and what number of

regular patrolmen, shall be appointed by the board of Metropolitan police, to be stationed in such town or incorporated village, and to direct the sum necessary to be raised by tax, in such town or incorporated village, for contribution to the Metropolitan police fund, to pay such patrolman or patrolmen. Upon proper representation of any such action of any of the above towns or villages, the board of supervisors of the county in which such town is situated, or the trustees of such incorporated village, shall cause the sum so voted to be collected with the other expenses of said town or village. A special town meeting or village election, for the purpose or purposes aforesaid, may at any time be held, if required, in the manner provided by law for special town meetings, or now authorized in respective incorporated villages within the said district. But unless so voted as aforesaid, the counties of Richmond, Westchester and Queens, and such towns in the county of Kings as are not within the bounds of the city of Brooklyn, shall not become liable to the imposition of any tax for the general or partial expenses of the board of Metropolitan police, provided for or incurred by this act, and only in any case according to the provisions of voting aforesaid, and then such proportion of the general or partial expenses is to be imposed upon the town or towns so voting, in proportion to the number of patrolmen employed by such town or towns.

§ 13. Each member of the Metropolitan police force of the Metropolitan police district shall hold office, respectively, during his good behavior, and shall be liable to removal from membership of the said police force only after written charges shall have been preferred against him, according to the rules and regulations of the said board, and the same shall have been publicly heard and examined after notice to him thereof by the said board, in manner to be prescribed by said rules and regulations. But no person shall ever be appointed to membership in the police force of the Metropolitan police district, or shall continue to hold membership therein, who is not a citizen of the United States, or who has ever been convicted of crime, or who cannot understandingly read or write in the English language, or who shall not have resided within the district during the five years next preceding his appointment, except that this last limitation of residence shall not apply to members employed for detective service, not exceeding fifty in number.

Police-
men
to hold
office dur-
ing good
behavior.

19 N. Y., 188; 7 Ab., 87; 6 Ab., 162; 5 Ab., 422.

§ 14. Vacancies in the police force shall be filled up as follows: Inspectors must be appointed from among those now holding office as deputy superintendent, or who are captains. Captains must be appointed from among sergeants, and sergeants must be appointed from among patrolmen.

Vacancies,
how filled.

§ 15. The board of police of the Metropolitan police district, whenever expedient, shall, on the application of any

Additional
regular or
special pa-

PART I.
trolden
may be
appointed
in extraor-
dinary
cases.

president of an incorporated village within the said district, or corporation, or person or persons showing the necessity thereof, detail regular patrolmen of the police force, or appoint and swear any additional number of special patrolmen of the police force to do special duty at any place within the Metropolitan police district, upon the corporation, person or persons by whom the application shall be made, contributing to the Metropolitan police fund, by payment to the treasurer, not exceeding the sum of two dollars and fifty cents per diem of service on such detail of special duty; but the patrolmen so additionally and specially appointed, shall be subject to the orders of the superintendent of Metropolitan police force, and shall obey the rules and regulations of the said board, and conform to its general discipline, and to such special regulations as may be made, and shall wear such dress or emblems as the board may direct, and shall, during the term of their holding appointment, possess all the powers, privileges, and discharge all duties of the Metropolitan police force applicable to patrolmen. The persons so appointed may be removed at any time by the board of police, without assigning cause thereof, upon notice to the person or persons who applied for the appointment as aforesaid.

Special
patrolmen,
without pay
may be ap-
pointed in
certain
cases.

§ 16. The board of police may also, upon any emergency or apprehension of riot, pestilence or invasion, appoint as many special patrolmen, without pay, from among the citizens, as it may deem desirable, and during any day of public election it may appoint, to perform duty in the city of New York, not exceeding five hundred special patrolmen, who may be paid out of the police fund contributed by said city two dollars each for their services as such special patrolmen; provided, however, that each special patrolman so appointed shall make oath before any commissioner of police, the superintendent of police force, or the chief clerk of the board of Metropolitan police at the time of appointment, that he will not interfere in any manner with the election taking place on the day for which he is appointed, otherwise than by depositing his own vote; and providing that such pay may be withheld, and he may be duly prosecuted as for a misdemeanor, if the terms of such oath be violated; and during the term of service of any special patrolman authorized as aforesaid, he shall possess all the powers and privileges, and perform all the duties of the patrolmen of the standing force of the district. Every such special patrolman shall wear an emblem, to be prescribed and furnished by the board of Metropolitan police.

Members of
police force
may not
withdraw
except by
permission.

§ 17. No member of the Metropolitan police force, under penalty of forfeiting the salary or pay which may be due to him, shall withdraw or resign, except by permission of the board of Metropolitan police, unless he shall have given to the superintendent one month's notice, in writing, of such intention. There shall be no limitation or restriction of place

of residence, to any member of the Metropolitan police force, other than residence within the Metropolitan police district.

§ 18. The commissioners of Metropolitan police shall annually, or as often as a vacancy shall occur, select one of their number to act as the president of the board of Metropolitan police. He shall preside at the meetings of the board and whenever a vacancy shall occur in the office of superintendent of Metropolitan police force in the absence or disability of the said superintendent, the president shall possess all the powers and perform all the duties of that office, subject to the rules and regulations of the board of Metropolitan police, and with proportionate increase of pay during such continuance of duty.

President
to be ap-
pointed.

Powers and
duties of.

§ 19. The commissioners of Metropolitan police shall select one of their number to be the treasurer of Metropolitan police. He shall be the fiscal officer of the Metropolitan police district. He shall, on check and voucher, duly disburse all moneys belonging to the Metropolitan police fund, and shall deposit the same, when paid to him by the treasurer of the State of New York, in a bank designated by such officer. He shall execute a bond, with sureties, not less than two, conditioned, in a penalty of fifty thousand dollars, to the people of the State of New York, for the faithful discharge of his duties as such treasurer. The sureties shall justify before a justice of the supreme court; but before the said treasurer shall enter upon his duties, the said bond shall be approved by and filed with the comptroller of the state. Should any collections be made, upon civil action on such bond, they shall be immediately paid to the credit of the Metropolitan police fund of the Metropolitan police district. No expenses other than salaries and pay herein provided, shall ever be incurred by the board of police, except for rents, stationery, printing, advertising, fuel and lights, unless the same shall be expressly authorized and provision therefor made as a separate county or city charge by the board of supervisors for the county, or the joint board of the supervisors and aldermen of the city of Brooklyn, within which the expenditure becomes necessary.

Treasurer
of the
police.

§ 20. The board of Metropolitan police may appoint a chief clerk, a property clerk and deputy clerks not to exceed six, surgeons of police not to exceed five, and doormen not to exceed two, to each station house. The persons thus severally appointed shall severally hold office at the pleasure of the said board.

Clerks and
surgeons
to be appointed.

§ 21. The Board of Metropolitan police shall provide such office and business accommodations as it shall deem requisite for the transaction of its own business and that of its subordinate officers; there shall be a central office in the city of New York to be known as the central department of Metropolitan police; but the inspector of police force in Brooklyn shall have office accommodation in that city.

Office and
business
accommodations.

PART I.
Misdemeanor for any one except proper officers to serve process.

§ 22. It shall be a misdemeanor for any person not being a regular member of a police established in any city of this state, or a member of the Metropolitan police force, or a constable of this state, or a police constable or assistant police constable, or a sheriff or one of the usual general deputies of any sheriff of this state, to serve any criminal process within the said the Metropolitan police district.

Board of police to furnish information to mayors, &c.

§ 23. The board of Metropolitan police, shall at all times, whenever consistent with the rules and regulations of the said board, and with the requirements of this act, furnish all police information desired by the mayors or common councils of said cities, respectively, or by the boards of supervisors of the counties of Westchester and Richmond, and the county towns of Kings and Queens, within the said the Metropolitan police district.

Powers of board.

§ 24. The board of Metropolitan police is hereby invested with, and shall hereafter exercise all the powers now conferred by law upon mayors of cities in respect to requiring the services of the military in aid of the civil authorities to quell riots, suppress insurrections, protect the property and preserve public tranquillity; and such investiture of power shall exclude that of the mayors of New York and Brooklyn, within these cities, respectively, and such powers shall apply to the whole Metropolitan police district.

1 Hilt., 562.

May summon witnesses.

Administer oaths.

False swearing deemed perjury.

§ 25. The board of Metropolitan police shall have power to issue subpoenas, tested in the name of its president, to compel the attendance of witnesses upon any proceedings authorized by its rules and regulations. Each commissioner of police, the superintendent of police and the chief clerk of the board of police, are hereby authorized and empowered to administer affirmations and oaths to any person summoned and appearing in any matter or proceeding, authorized as aforesaid, or to make any depositions necessary to be made under the rules and regulations of the board of police, or for the purposes of this amended act. Any willful and corrupt false swearing by any witness or person, to any material fact in any necessary proceeding under the said rules and regulations, or under this act, shall be deemed perjury, and punished in the manner now prescribed by law for such offense. The provisions and procedure of section three of an act entitled "An act to enable the common council of the city of New York to take testimony in matters referred for investigation or inquiry," passed February eighth, eighteen hundred and fifty-five, are hereby applied to the case of any witness subpoenaed under this section.

May establish stations and sub-stations.

§ 26. The board of Metropolitan police may from time to time establish stations and station houses, or sub-stations and sub-station houses, at least one to each precinct, for the accommodation thereof of members of the police force, and

as temporary places of detention for persons arrested and property taken within the precinct.

§ 27. The commissioners of Metropolitan police in furtherance of the police government of the said the Metropolitan police district, and for the promoting and perfecting the police discipline of subordinates and of the members of the Metropolitan police force, are empowered to enact, modify and repeal, from time to time, "rules and regulations of general discipline," wherein, in addition to such other provisions as may be deemed expedient by said commissioners, there shall be particularly defined, enumerated and distributed, the powers and duties of the superintendent of police force, and of the inspectors and captains of police force, and of the clerks of the said board, of the sergeants, of the door-men, and of the members of the Metropolitan police force; and wherein shall be specified the modes of appointment to, and removal from office of the said superintendent and inspectors, and the members in the Metropolitan police force, and the manner of discipline of the said police force, provided that such by-laws, ordinances, rules or regulations, shall not conflict with any of the provisions of this amended act, or with the constitution of the United States, or of this state.

Rules and
regulations.

§ 28. The members of the police force of the said "the Metropolitan police district," shall furthermore possess in every part of this state, all the common law and statutory powers of constables, except for the service of civil process; and any warrant for search or arrest, issued by any magistrate of this state, may be executed in any part thereof by any member of the police force of the said "the Metropolitan police district," and all the provisions of sections seven, eight and nine of chapter two, title two, part four of the Revised Statutes, in relation to the giving and taking of bail, shall apply to this act.

Members to
possess
powers of
constables.

§ 29. It is hereby made the duty of the Metropolitan police force at all times of the day and night, within the said Metropolitan police district, and the members thereof are accordingly hereby thereunto empowered, to especially preserve the public peace, prevent crime, detect and arrest offenders, suppress riots and insurrections, protect the rights of persons and of property, guard the public health, preserve order at every primary and public election, remove nuisances existing in public streets, roads, places and highways; repress and restrain disorderly houses and houses of ill-fame, to arrest all street beggars and mendicants, to provide a proper police attendance at every fire, in order that thereby the firemen, fire engines and property exposed may be suitably assisted or protected; assist, advise and protect emigrants, strangers and travelers in public streets, or at steamboat and ship landings, or railway stations; enforce every law relating to the suppression and punishment of crime, or to the observance of Sunday, or regarding pawnbrokers or mock auctions, or emi-

Duties of
the police
force.

PART I.

grations, or elections, or gambling, or intemperance, or lotteries, or lottery policies, or vagrants, or disorderly persons, or the public health, or any ordinance or resolution of common councils, or town, or village authorities within the said district, applicable to police, health or criminal procedure.

May arrest
certain per-
sons with-
out warrant

§ 30. The several members of the police force shall have power and authority to immediately arrest, without warrant, and to take into custody any person who shall commit, or threaten or attempt to commit, in the presence of such member, or within his view, any breach of the peace or offense directly prohibited by act of the legislature, or by any ordinance of the city, town or village within which the offense is committed, threatened or attempted; but such member of the police force shall immediately and without delay, upon such arrest, convey in person such offender before the nearest magistrate, that he may be dealt with according to law.

Inspectors.

§ 31. The office of deputy superintendent of police created by the act of which this act is amendatory, is hereby abolished but the board of Metropolitan police shall appoint the persons now acting as deputy superintendents to be the inspectors of Metropolitan police force, provided by this act; and the said persons are hereby continued in membership of the Metropolitan police force under such last named designation; and the said board may appoint from the captains of the Metropolitan police, two additional inspectors of Metropolitan police, whose duties shall be prescribed by the board of Metropolitan police, by its rules and regulations; but one of said inspectors shall always perform duty in the city of Brooklyn.

Constables
elected, to
possess the
same pow-
ers as
the Me-
tropolitan
police
force.

§ 32. The constables elected by the electors within the counties of Westchester and Richmond, and in the county towns of Kings and of Queens, and the police constables and assistant police constables in villages within the said the Metropolitan police district, shall possess all the powers conferred by this amended act upon the Metropolitan police force. The board of supervisors, in each of the said last mentioned counties, may call upon the board of Metropolitan police to appoint for duty, within the police precincts of which the said county shall be a part, as many additional captains, lieutenants, sergeants, and patrolmen, as the said board of supervisors shall enumerate and describe, upon appropriating to the Metropolitan police fund the necessary expenses, salaries or pay to be incurred thereby. It shall become the duty of the board of Metropolitan police, thereupon to appoint such additional members of the Metropolitan police force, but not until so called upon.

Supervisors
to raise
money by
tax to carry
out fiscal
provisions
of this act.

§ 33. The supervisors of the counties of Richmond, Westchester, Kings and Queens are hereby authorized and empowered from time to time to levy and raise by tax upon the estates, real and personal, taxable within each county, such sum or sums of money as may be required to carry into effect

in respect to either of said counties, the fiscal provisions of this act affecting said counties or any of them.

5 Ab., 212.

§ 34. No person holding office under this act shall be liable to military or jury duty, nor to arrest on civil process, or to service of subpoenas from civil courts, whilst actually on duty.

Exemptions of police.

§ 35. The health officer of the port of New York shall have power at all times to call upon any of the police force of the district, to a number not exceeding ten, to aid him upon any necessary emergency in enforcing the powers and duties conferred upon his office by law, and it shall thereupon become the duty of any such member of the police force so called upon to obey him. But such service shall not continue longer than twenty-four hours, unless by direction of the board of Metropolitan police.

Health officer may command services of police.

§ 36. In every case of arrest by any member of the Metropolitan police force, the same shall be made known within six hours thereafter to the superior upon duty in the precinct wherein the arrest was made by the person making the same; and it shall be the duty of the said superior, within twelve hours after such notice, to make written return thereof according to the rules and regulations of the board of Metropolitan police, with the name of the party arrested, the alleged offense, the time and place of arrest, and place of detention.

Arrest to be reported.

§ 37. The board of Metropolitan police are authorized from time to time to contract for and to provide suitable accommodation within the said "the Metropolitan district," for the detention of witnesses who are unable to furnish security for their appearance in criminal proceedings; and such accommodations shall be in premises other than those employed for the confinement of persons charged with crime, fraud or disorderly conduct. And it shall be the duty of all magistrates, in committing witnesses, to have regard to the rules and regulations of the board of Metropolitan police in respect to their detention.

Accommodation for detention of witnesses.

§ 38. The board of Metropolitan police may also suspend from pay or duty, or both, any member of the said force, but not longer than thirty days from pay at any one suspension.

Suspension of members.

§ 39. The superintendent of the Metropolitan police force shall make to the board of Metropolitan police quarterly reports in writing of the state of "the Metropolitan police district," with such statistics and suggestions as he may deem advisable to submit for the improvement of the police government and discipline of the said district. The board of Metropolitan police shall, on or before the first Monday in December in each year, make a report, in writing, to the governor of the state upon the condition of the Metropolitan police within the said Metropolitan police district.

Quarterly reports.

Annual reports.

§ 40. The superintendent of Metropolitan police, and each captain of police within his precinct, shall possess powers of

Powers of superintendent.

PART I.
dent and
captains.

general police supervision and inspection over all licensed pawnbrokers, licensed venders, licensed junkshop keepers, junk boatmen, licensed cartmen, dealers in second-hand merchandise, intelligence office keepers, and auctioneers of watches and jewelry, within the said Metropolitan police district; and in the exercise of and in furtherance of said supervision, may from time to time empower members of the police force to fulfill such special duties in the aforesaid premises as may be from time to time ordained by the board of Metropolitan police. The said superintendent, and each captain, within his precinct, may, by authority in writing, empower any member of the Metropolitan police force, whenever such member shall be in search of property feloniously obtained, or in search of suspected offenders, to examine the books of any pawnbroker or his business premises, or the business premises of any licensed vendor, or licensed junk-shop keeper, or dealer in second-hand merchandise, or intelligence office keeper, or auctioneer of watches and jewelry, or boat of any junk boatman. Any such member of the Metropolitan police force, when thereto authorized in writing by the said superintendent, and having in his possession a pawnbroker's receipt or ticket, shall be allowed to examine the property purporting to be pawned or pledged, or deposited upon said receipt or ticket, in whosoever possession said property may be; but no such property shall be taken from the possessor thereof without due process or authority of law. Any willful interference with the said superintendent or captain of police, or with any member of the Metropolitan police force, by any of the persons hereinbefore named in this section, whilst in official and due discharge of duty, shall be punishable by misdemeanor.

Duty in
 regard to
 gaming
 and disorderly
 houses.

§ 41. If any member of the Metropolitan police force, or if any two or more householders shall report, in writing, under his or their signature, to the superintendent of the Metropolitan police force, that there are good grounds (and stating the same) for believing any houses, room or premises within the said "the Metropolitan police district" to be kept or used as a common gaming house, common gaming room, or common gaming premises, for therein playing for wagers of money at any game of chance, or to be kept or used for lewd and obscene public amusement, or the deposit or sale of lottery tickets or of lottery policies, it shall be lawful for the general superintendent of Metropolitan police to authorize any member or members of the police force to enter the same, who shall forthwith arrest all persons there found offending against law, and seize all implements of gaming, or lottery tickets or lottery policies, and convey any person so arrested before the nearest magistrate, and bring the articles so seized to the office of the board of Metropolitan police. It shall be the duty of the said superintendent of the Metropolitan police force to cause such arrested persons to be vigorously prosecuted, and such articles seized to be destroyed.

CHAP. XX.
Intoxicating liquors
not to be
sold on
Sunday.

§ 42. It shall not be lawful for any person to publicly keep or dispose of any intoxicating liquors upon the first day of the week, called Sunday, or upon any day of public election, within the said "the Metropolitan police district," under a penalty of fifty dollars for each offense, to be sued for and recovered in the name of the people of the State of New York, by the district attorney of the county wherein the offense was committed, for the benefit of the said police life insurance fund, and it shall be the duty of the district attorney to pay over quarterly all moneys or judgments collected by him, except the costs and disbursements under the provisions of this act, or the act of which this is amendatory, to the treasurer of said police board. And it shall be the duty of the superintendent of police to strictly enforce the provisions of this section by his proper orders in respect thereto, to the members of the Metropolitan police force, and it is hereby made the duty of the said members in respect to the enforcing the provisions of this section, to proceed in the manner provided by law for the arrest of offenders.

§ 43. It shall be a misdemeanor, punishable by imprisonment in the county jail, or in the city and county of New York in the penitentiary, for not less than one year or exceeding two years, or by a fine for not less than two hundred and fifty dollars, for any person without justifiable or excusable cause to use or to incite any other person to use personal violence upon any elector on any election day in the Metropolitan police district, or upon any member of the police force thereof when in the discharge of his duty, or for any such member to willfully neglect making any arrest for an offense against the law of this state or ordinance in force in the said district, or for any person not a member of the police force to falsely represent himself as being such member with a fraudulent design upon persons or property.

Penalty for
violence on
election day
or for false-
ly assuming
to be a
policeman.

§ 44. The board of Metropolitan police shall cause to be kept general complaint books, in which shall be entered any complaint of a police nature preferred upon a personal knowledge of the circumstances thereof, with the name and residence of the complainant. The said board shall also cause to be kept, books of registration of lost, missing, or stolen property, for the general convenience of the public, and for the information of the Metropolitan police force. The said board shall cause to be kept, books of record of "the Metropolitan police district," wherein shall be entered the name of every member of the Metropolitan police force, with the time and place of his nativity; the time when, and the place where, he became a citizen, if he was born out of the United States; his age, upon becoming such member, and his former occupation; number of his family and the residence thereof, and the date of appointment or of his resignation or withdrawal or of dismissal from office, with the cause of the latter. And against all such entries suffi-

Certain
books to be
kept.

PART I.

cient space shall be left wherein to make record of any especial arrests made from time to time, by such member of the police force, or of any special service deemed meritorious by the said board. The said board shall also cause to be kept in proper books, the accounts of the treasurer, and all receipts for money expended, or for warrants or for check, for moneys issued by the treasurer, shall be written in books kept for the purpose; and the said receipts shall be signed by the person or persons receiving said money, warrants or checks, from the treasurer. Such books shall be, at all business hours and when not in actual use, open to public inspection. The board of Metropolitan police shall also cause to be kept and bound, all police returns and reports from any member of the Metropolitan police force, and all minutes of the proceedings of said board; which returns, reports and minutes, shall only be open for public inspection in the discretion of said board.

Warrants
of appoint-
ment to be
issued.

§ 45. Every member of the Metropolitan police force shall have issued to him by the board of Metropolitan police a proper warrant of appointment, signed by the president of the said board, and countersigned by the chief clerk, which warrant shall contain the date of his appointment and his rank.

Board to
take secur-
ity and oath
of subordi-
nates.

§ 46. The board of Metropolitan police shall make suitable provisions respecting security to be entered into by the superintendent of police force, and by the inspectors of police force, and by the property clerk for the faithful performance of their respective duties. Each member of the Metropolitan police shall take an oath of office and subscribe the same in a book kept for that purpose, which oath of office may be taken before any commissioner of Metropolitan police who is hereby empowered to administer the same, and write acknowledgment thereof.

Patrolmen
to be de-
tailed at
election
polls.

§ 47. It shall be the duty of the commissioners of Metropolitan police to detail, on the day of any election within the cities of New York and Brooklyn respectively, at least two patrolmen to each election poll.

Poll clerks
to be ap-
pointed.

§ 48. Said commissioners shall, in and for each of the said cities, appoint all poll clerks provided for by law, and shall, in and for the said cities, provide ballot-boxes for use at general, special and charter elections, and for the custody of the said boxes, except during the taking, receiving and counting of the votes.

Booth or
box for di-
stribution of
tickets.

§ 49. It shall be the duty of the board of police to prevent any booth or box for the distribution of tickets at any election to be erected or maintained within one hundred and fifty feet of any polling place within the cities aforesaid.

Criminal
process to
be served
by police.

§ 50. All criminal process issuing out of any court, or from any justice or judge in the city of Brooklyn, shall be served by a member of the police force and not otherwise. And the said board of police commissioners shall detail so many patrolmen as shall be necessary to attend all courts transacting criminal business in said city of Brooklyn, and no constables

or marshals shall hereafter attend said courts, or be paid, either by the authorities of said city or by the supervisors of the county of Kings, for any service in said courts.

§ 51. It shall be the duty of the board of Metropolitan police district, to set apart a Metropolitan sanitary police company, and to assign to command of each of said companies either a captain or sergeant of Metropolitan police, and to assign to each company such especial duties by the rules and regulations, as may be publicly advantageous.

Sanitary
police com-
pany.

§ 52. The Metropolitan sanitary company are hereby empowered, under such distribution of power and duty as may be made by the rules and regulations, to visit and make inspection of all ferry boats, manufactories, slaughter-houses, tenement houses and edifices suspected of or charged with being unsafe, and to take all necessary legal measures for promoting the security of life or health, upon or in said boats, manufactories, houses and edifices, and to make report of inspection and action in the premises to the board of Metropolitan police. Whenever said board shall be satisfied by such report, that any ferry boat, manufactory, slaughter-house, tenement house or edifice is maintained in a manner prejudicial to the lives or health of the public, it shall, after due entry upon its minutes of the circumstance, cause complaint to be made, founded upon such report and circumstance, before any magistrate of the Metropolitan district, who shall, in a summary way, upon such complaint made under oath, issue his proper warrant, reciting therein the name of the member or members of the Metropolitan sanitary police company, for the arrest of the person in charge of such ferry boat, manufactory, slaughter-house, tenement house and edifice, to the end that he may be brought before such magistrate, and the complaint of insecurity, or the life or health of the public so made, be duly investigated, according to the law of examination into misdemeanors. If said magistrate shall be satisfied, on a summary hearing thereof, that such charge of insecurity of the lives or health of the public, is founded on reasonable and probable cause, he may, by his order in writing, command any such ferry boat to cease running, or any business in such manufactory or slaughter-house to cease, until the cause of complaint aforesaid shall be removed, to the satisfaction of the board of Metropolitan police.

Duties of
sanitary
company.

§ 53. The board of Metropolitan police may, by its order in writing, cause any tenement house to be cleansed at any time after three days' notice for such cleansing shall have been served upon the owner, landlord or agent thereof, and within such time the same has been neglected. The expense of taking down any edifice, or of cleansing any tenement house, as aforesaid, shall be paid by the comptroller of the city within which the said edifice or house is situated; a copy of the order of the board in writing, together with the bill of expense, countersigned by the comptroller aforesaid, with a description

May cause
tenement
houses to be
cleansed.

PART I.

of the premises and real estate thereof, being filed with the clerk of the county, shall become and continue to be a lien for the amount of such repairs, with interest upon said premises, to the same effect as a judgment of a court of record, until such time as the comptroller, on reimbursement of said expenses and interest, shall in writing authorize the said county clerk to discharge the same.

Proceedings may be removed into supreme court for examination.

§ 54. The said proceedings of the board of Metropolitan police or of the magistrate acquiring jurisdiction as aforesaid may be removed into the supreme court by certiorari for examination. The acts of the said board, when in accordance with the provisions aforesaid, shall be deemed judicial acts.

Duty of surgeons of the force.

§ 55. In addition to such duties which shall be assigned to surgeons of Metropolitan police by the rules and regulations, it is hereby made their duty especially to visit each day the station houses of police within the Metropolitan police district and exercise supervision over the sanitary condition of station and lodging houses, and of the members of the force connected with the precinct in which the same is situated, and at all times to perform such services of inspection of nuisances and tenement houses, and such medical and surgical attendance and services to vagrants, disorderly persons, intoxicated persons and sick persons, within said station houses, and to witnesses in the house of witness detention, as may be requested of them in writing, by the superintendent of police, or by the inspectors or captains of Metropolitan police.

May create, operate and maintain telegraph.

§ 56. The board of Metropolitan police shall have power to create, operate and maintain, under the general laws of the state relating to telegraph lines, all such lines of telegraph in such places within the said district as for purposes of police the board shall deem necessary. But the ownership of the fixtures and apparatus for such telegraphic purposes, in the cities of New York and Brooklyn, shall be in the respective municipal corporations of said cities, but subject to the exclusive use and control of the board of Metropolitan police.

Expenses of criminal process to be a county charge.

§ 57. The necessary expenses incurred in the execution of criminal process within the said "the Metropolitan police district," shall be a county charge only against the county from which the said process issued.

Station houses and accommodations to be provided.

§ 58. It is hereby declared to be the duty of the common councils of the cities of New York and Brooklyn, respectively, in accordance with the practice and ordinances now existing therein, to provide, at the expense of said cities, respectively, all necessary accommodations within such precincts of the said "the Metropolitan police district," as shall be contained within the boundaries of the said cities, respectively, for the station houses required by the board of Metropolitan police, for the accommodation of the police force of such precincts, and for the lodging of vagrants and disorderly persons, and for the temporary detention of persons arrested for offenses. In case the said common councils, or either of them, neglect

or refuse, within thirty days after having been thereto, in writing, requested by the said board of Metropolitan police to provide accommodation, as aforesaid, or station houses, which in the opinion of the said board are not suitable, or to put the said station house in due repair, then the said board may make their own provisions and contracts of leasing or hiring, or repairing in the premises, and the same, when made, shall become a proper charge and debt for the expenses and disbursements thereof, against the said city whose common council has so neglected or refused to make provision in manner and form aforesaid.

§ 59. The accommodations required for the police purposes of this act, in portions of the Metropolitan police district, other than the cities of New York and Brooklyn, shall be those ordinarily used by the criminal authorities of each town or village therein. In places within the said district, other than the cities of New York and Brooklyn, any member of the Metropolitan police force taking any person lawfully under arrest, at night, may, in default of public accommodation of custody, provide for such person a place of detention in his discretion, but for no longer period than twelve hours.

Accommodations

§ 60. The commissioners of Metropolitan police, and the comptrollers of the cities of New York and Brooklyn, convened as a board of estimate and apportionment, shall annually, on or before the first day of September, make up a financial estimate of the sums required annually for expenses in the execution of criminal process, or for the fitting up, warming, lighting, and furnishing police station houses, and the house for detention of witnesses, and for alterations in, additions to, and repairs of the same, and for office accommodation and printing, and stationery, and telegraph apparatus and fixtures, and for badges, emblems and equipments of the police force, and also of the sums necessary for counsel fees, law expenses and disbursements incurred by the board of Metropolitan police, or by the commissioners of Metropolitan police, or rendered necessary in criminal or civil actions and proceedings against the superintendent or inspectors, or property clerk, or members of the Metropolitan police force, for acts done in the discharge of duty, and to defray the salaries and pay required by this act, and such other general expenses as may from time to time, in the judgment of such apportionment board, become necessary, with the enumeration thereof. Such estimate shall be accompanied with the written apportionment, by said board, of the proportion of expenses applicable to each city, county, town or village, in the Metropolitan police district, interested therein, in the ratio of the number of patrolmen authorized by this act, and employed by such city, county, town or village respectively. The said estimate shall then be submitted to an auditing committee, composed of the presidents, respectively, of the board of supervisors of the counties of New York, Kings, Westchester and

Expenses of criminal process to be estimated annually.

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Richmond, and of the board of alderman of the city of Brooklyn, and of the supervisor of the respective towns of Newtown, Flushing and Jamaica, in the county of Queens, who may meet by a majority thereof to consider the same, on or before the first Monday of October, in each and every year. If the said auditing board, on or before the second Monday of said October, shall object in writing to such estimate and apportionment, or any portion thereof, and so notify or cause to be notified the said board of estimates and apportionment, it shall be the duty of the latter to immediately and carefully revise the same, and consider the said objections. If such board shall adhere to their original action of estimate or appointment, or if they shall modify the same, then their final determination shall be binding upon the respective counties, or cities, or towns, or villages interested therein, except that in the counties of Richmond, Westchester and Queens, no proportion of the general expenses of the board of police, in each year, shall be chargeable to any of said counties, or to any town or village therein, except such county, town or village shall have voted to employ and pay patrolmen.

Boards of supervisors to raise amount of assessment

§ 61. The board of supervisors of the county of New York, and the joint board of supervisors and aldermen of the city of Brooklyn, are hereby respectively empowered and directed annually to order and cause to be raised and collected by tax upon the estates, real and personal, subject to taxation according to law, within the said county of New York and city of Brooklyn, respectively, the sums of money as aforesaid annually estimated and apportioned as the share of said county or city, of the said total expenses of the Metropolitan police district.

Moneys to be paid into and from state treasury.

§ 62. The several sums of money provided for by the preceding sections shall be paid into the treasury of the state, and shall be paid therein and therefrom under the fiscal regulations of law relating to the school fund of the State of New York.

Salaries.

§ 63. The commissioner of Metropolitan police who shall be selected as treasurer of the board of Metropolitan police, shall receive an annual salary of three thousand dollars, and each other commissioner shall receive a compensation of eight dollars for each day of actual service, the same to be annually certified to the comptroller of the state by the said treasurer of the board. The superintendent of the Metropolitan police shall receive an annual salary of five thousand dollars. Each inspector of police shall receive an annual salary of two thousand dollars. Each surgeon of police shall receive an annual salary of fifteen hundred dollars. The chief clerk to the board of Metropolitan police shall receive a like salary of two thousand dollars. The property clerk shall receive a like salary of twelve hundred dollars; and each deputy clerk a like salary of one thousand dollars. Each captain of Metropolitan police shall receive an annual salary of twelve hun-

dred dollars. Each sergeant of Metropolitan police shall receive an annual salary of nine hundred dollars. The pay of each patrolman shall be at the yearly rate of eight hundred dollars, and that of each doorman at the rate of seven hundred dollars per year. The salaries and pay aforesaid shall be paid monthly to each person entitled thereto, in modes to be prescribed by the rules and regulations, subject to such deductions each month from the salary or pay of members of the Metropolitan police force as the treasurer shall make (and which deductions he is hereby authorized to retain) to satisfy fines imposed on any member of the Metropolitan police force by way of discipline or punishment, and as prescribed by the rules and regulations of the board. The salary of the treasurer and the compensation of each other commissioner shall be paid by the comptroller of the state out of the Metropolitan police fund.

§ 64. No member of the board of Metropolitan police, under any pretense whatsoever, shall, for his own benefit, share in any present, fee, gift, or emolument for police services, additional to his regular salary or compensation.

Members to
receive no
present, &c

§ 65. The board of police, for meritorious and extraordinary services rendered by any member of the police force, in the due discharge of his duty, may permit any member of the police force to retain for his own benefit, any reward or present tendered him therefor; and it shall be cause of removal from the Metropolitan police force for any member thereof to receive any such reward or present without notice thereof to the board of Metropolitan police. Upon receiving said notice, the said board may either order the said member to retain the same or shall dispose of it for the benefit of the police life insurance fund.

Meritorious
services,
how
rewarded.

15 W., 44; 9 W., 262; 2 Ed., 95.

§ 66. All fines imposed by the board of police upon members of the Metropolitan police force, by way of discipline and collectible from pay or salary, and all rewards, fees, proceeds of gifts and emoluments that may be paid and given for account of extraordinary services of any member of the Metropolitan police force (except when allowed to be retained by said member); and all moneys remaining for the space of one year in the hands of the property clerk, or arising from the sale of unclaimed goods; and all proceeds of suits for penalties, under this amended act, shall be deposited and paid into the bank wherein the treasurer of the board of Metropolitan police shall keep an account. The payments so made shall constitute and be deposited and kept as a fund, to be called the "police life insurance fund," and the persons who shall from time to time fill the office of the said treasurer of the board of Metropolitan police and that of Comptroller of the city of New York and city of Brooklyn, are hereby declared the trustees of the said fund, and may from time to time invest the same, in whole or in part, as they shall deem

Proceeds of
fines, gifts,
&c., how
disposed of.

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Provision
for mem-
bers be-
coming dis-
abled, su-
perannua-
ted, or
killed while
on actual
duty.

most advantageous for the objects of such fund, and are empowered to make all necessary contracts and take all necessary remedies in the premises.

§ 67. If any member of the Metropolitan police force, whilst in the actual performance of duty, shall become permanently disabled, so as to render his dismissal from membership necessary, or if any such member shall become superannuated after ten years of membership, the sum of one hundred and fifty dollars, as an annuity, to be paid such member, shall become chargeable upon the Metropolitan police life insurance fund. If any member of the Metropolitan police force, whilst in the actual discharge of his duty, shall be killed, or shall die from the immediate effect of any injury received by him whilst in such discharge of duty, and shall leave a widow, or if no widow, any child or children under the age of sixteen years, a like sum, by way of annuity, shall become chargeable upon the said fund, to be paid to such widow so long only as she remains unmarried, or to such child or children so long only as said child, or the youngest of said children, continues under the age of sixteen years. In every case the board of Metropolitan police shall determine the circumstances thereof, and order payment of the annuity to be made by draft, signed by each trustee of the said fund. But nothing herein contained, shall render any payment of said annuity obligatory upon the said board, or the said trustees, or chargeable as a matter of legal right. The board of Metropolitan police, in its discretion, may at any time order such annuity to cease.

Property
taken pos-
session of
by police.

§ 68. 1. All property, or money alleged or supposed to have been feloniously obtained, or which shall be lost or abandoned and which shall be thereafter taken into the custody of any member of the Metropolitan police force, or criminal court in the city of New York, or which shall come into custody of any police justice, shall be by such member or justice, or by order of said court, given into the custody of and kept by the property clerk of the Metropolitan police district, and all such property and money shall be particularly registered by said property clerk in a book kept for that purpose, which shall contain also a record of the names of the person from whom such property or money was taken, the names of all claimants thereto, the time of the seizure and any final disposition of such property and money.

1b.

2. Whenever property or money shall be taken from persons arrested, and shall be alleged to have been feloniously obtained, or to be the proceeds of crime, and whenever so brought, with such claimant and the person arrested, before some magistrate for adjudication, and the magistrate shall be then and there satisfied from evidence that the person arrested is innocent of the offense alleged, and that the property rightfully belongs to him, then said magistrate may thereupon, in writing, order such property or money to be returned, and

the property clerk, if he have it, to deliver such property or money to the accused person himself, and not to any attorney, agent or clerk of such accused person.

3. If any claim to the ownership of such property or money shall be made on oath before the magistrate, by or in behalf of any other persons than the persons arrested, the said accused person shall be held for trial or examination, such property or money shall remain in the custody of the property clerk until the discharge or conviction of the persons accused.

Claims to ownership to be made on oath.

4. All property or money taken on suspicion of having been feloniously obtained, or of being the proceeds of crime, and for which there is no other claimant than the person from whom such property was taken, and all lost property coming into the possession of any member of the said Metropolitan police force, and all property and money taken from pawnbrokers as the proceeds of crime, or by any such member from persons supposed to be insane, intoxicated, or otherwise incapable of taking care of themselves, shall be transmitted as soon as practicable to the property clerk of the Metropolitan police district, to be duly registered and advertised for the benefit of all persons and parties interested, and for the information of the public as to the amount and disposition of the property so taken into custody by the police.

Property coming into possession of police, how disposed of.

5. All property and money that shall remain in the custody of the property clerk for the period of six months, without any lawful claimant thereto, after having been three times advertised in public newspapers, shall be sold at public auction, and the proceeds of such sale shall be paid into the police life insurance fund.

To be sold at public auction in certain cases.

6. If any property or money placed in the custody of the property clerk, shall be desired as evidence in any police or other criminal court, such property shall be delivered to any officer who shall present an order to that effect from such court; such property however shall not be retained in said court, but shall be returned to said property clerk, to be disposed of according to the previous provisions of this act.

Property desired as evidence.

§ 69. The persons in the respective offices of general superintendent, deputy superintendents, captains, sergeants and patrolmen of the Metropolitan police district, at the time of the passage of this amended act, and who have taken and subscribed an oath of office as members of the police force of such district, are hereby continued in office during good behavior, subject to such promotion as may have been provided by previous sections hereof, and to removal from office only according to the provisions of this amended act.

Present incumbents to continue in office.

§ 70. The board of police shall at all times cause the ordinances of the cities of New York and Brooklyn, not in conflict with the provisions of this act, to be properly enforced, and it shall be the duty of said board at all times, whenever consistent with the rules and regulations of the board, and

Ordinances of New York and Brooklyn to be enforced.

PART I.

with the requirements of this act, to furnish all information desired.

CHAP. 168.

AN ACT to confer additional powers upon the Metropolitan Police relating to the inspection of steam boilers.

PASSED April 9, 1862; three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Owners of
boilers to
report to
police board
annually.

§ 1. Every owner of a steam boiler or boilers in use in the Metropolitan police district shall annually, and at such convenient times, and in such manner and form as may by rules and regulations to be made therefor by the Metropolitan Police Board be provided, report to the said Metropolitan Police Board at its head quarters, the location of such steam boiler or boilers, and thereupon, and as soon thereafter as practicable, the Metropolitan sanitary company or such member or members thereof as may be competent for the duty herein prescribed, and may be detailed for such duty by the Metropolitan Police Board, but no person shall be detailed for such duty except he be a practicable engineer who shall proceed to inspect such steam boiler or boilers, and all apparatus and appliances connected therewith, and the strength and security of each boiler shall be tested by hydrostatic pressure; and they shall limit the pressure of steam to be applied to or upon such boiler, certifying each inspection and such limit of pressure to the owner of the boiler inspected, and also to the engineer in charge of the same; and no greater amount of steam or pressure than that certified in the case of any boiler, shall be applied thereto. In limiting the amount of pressure, wherever the boiler under test will bear the same, the limit desired by the owner of the boiler shall be the one certified.

A record to
be kept by
police
board.

§ 2. The Metropolitan Police Board shall preserve in proper form a correct record of all inspections of steam boilers, and of the amount of steam or pressure allowed in each case, and in cases where any steam boiler or the apparatus or appliances connected therewith, shall be deemed by the board after inspection to be insecure or dangerous, the board shall prescribe such changes and alterations as may render such boilers, apparatus and appliances secure and devoid of danger. And in the mean time and until such changes and alterations are made and such appliances attached, such boiler, apparatus and appliances may be taken under the control of the police board, and all persons prevented from using the same, and in cases deemed necessary the appliances, apparatus or attachments for the limitation of pressure may be taken under the control of the said police board. And no owner or agent

of any steam boilers shall employ any person as engineer without their having a certificate as to qualification from practical engineers to be countersigned by the commissioners of police.

§ 3. Any person applying or causing to be applied to any steam boiler a higher pressure of steam than that limited for the same, in accordance with the provisions of this act, and any person violating the provisions of the second section of this act, shall be guilty of a misdemeanor, and wherever any owner of any steam boiler in the Metropolitan district shall fail or omit to have the same reported for inspection as provided for by this act, such boiler may be taken under the control of the Metropolitan Police Board, and all persons prevented from using the same until it can be satisfactorily tested as herein provided for, and the owner shall in such case be charged with the expense of so testing it.

Penalty for violation of this act.

CHAP. 3.

AN ACT to prevent persons appearing disguised and armed.

PASSED January 28, 1845.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. Every person who, having his face painted, discolored, covered or concealed, or being otherwise disguised, in a manner calculated to prevent him from being identified, shall appear in any road or public highway, or in any field, lot, wood or enclosure, may be pursued and arrested in the manner hereinafter provided: and upon being brought before any judge or other officer, hereinafter designated, of the same county where he shall be arrested, and not giving a good account of himself, shall be deemed a vagrant, within the purview of the second title, of chapter twenty, of the first part of the Revised Statutes; and on conviction, as provided in the said title, shall be committed to and imprisoned in the county jail of the county where such person shall be found, for a term not exceeding six months; and all magistrates authorized in and by the first section of the second title, in the second chapter of the fourth part of the Revised Statutes, to issue process for the apprehension of persons charged with any offence, are authorized and required to execute the powers and duties in relation to the offence created by this act which are conferred and imposed on justices of the peace by the said second title of chapter twenty, and all other powers and duties conferred and imposed by this act.

Persons having their faces painted, &c., may be arrested.

§ 2. Every sheriff, deputy sheriff, constable, marshal of a city, or other public peace officer, or other citizen of the county where such person or persons shall be found disguised

Powers and duty of sheriffs and other officers.

PART I.

as aforesaid, may of his own authority, and without process, arrest, secure, and convey to any such magistrate, residing in the county where such arrest shall be made, any person who shall be found having his face painted, discolored, covered or concealed, or being otherwise disguised as aforesaid, to be examined and proceeded against in the manner prescribed in the said second title of chapter twenty; and it shall be the duty of any sheriff, deputy sheriff, constable, marshal or other peace officer, whenever any of them shall discover any person with his face so painted, discolored, covered or concealed, or being otherwise disguised as aforesaid, immediately to arrest, secure and convey such person to any such magistrate, to be proceeded with according to law; and whenever any such officer shall receive credible information of any person having his face so painted, discolored, covered or concealed, or being otherwise disguised as aforesaid, it shall be the duty of every such officer forthwith to pursue such person, and arrest, secure and convey him to any such magistrate.

Officers
may call on
inhabitants
for assist-
ance.

§ 3. In the execution of the duties prescribed in the last foregoing section, any sheriff, deputy sheriff, constable, marshal, or other peace officer, shall be authorized to command any male inhabitant of his county, or as many as he shall think proper, to assist him in seizing, arresting, confining and conveying to any such magistrate, and committing to the common jail of the county, every person with his face so painted, discolored, covered or concealed, or being otherwise disguised as aforesaid; and any inhabitant so commanded, may provide himself or be provided with such means and weapons as the officer giving such command shall designate.

Penalty for
neglect.

§ 4. Every person so commanded, as provided in the last preceding section, who shall refuse or neglect, without lawful cause, to obey such command, shall be deemed guilty of a misdemeanor, and be subject to a fine not exceeding two hundred and fifty dollars, or to imprisonment not exceeding one year, or to both.

Power of
magistrates
to arrest
certain per-
sons.

§ 5. Any magistrate to whom complaint shall be made that any person has appeared in the public highway, or in any lot, field, woods, or enclosure, with his face so painted, discolored, covered or concealed, or being otherwise disguised, as aforesaid, may, in his discretion, by warrant under his hand, depute and empower any elector of the county, to arrest, seize, confine, and bring such person before such magistrate, to answer such complaint. And in any such warrant, or in any other warrant or process against any person charged with having his face so painted, discolored, covered or concealed, or being otherwise disguised, as aforesaid, whose name shall not be known, it shall be sufficient to describe the offender by some fictitious name.

In public
houses.

§ 6. Every assemblage in public houses, or other places, of three or more persons disguised as aforesaid, is hereby declared to be unlawful: and every individual so disguised,

present thereat, shall be deemed guilty of a misdemeanor, and upon conviction be punished by imprisonment in the county jail not exceeding one year.

Punish-
ment of
persons
convicted.

§ 7. Every person convicted upon any indictment for a conspiracy or upon any indictment for a riot, or for any other misdemeanor, in which the offence shall be charged to have been committed by such person, while armed with a sword, dirk, fire arms, or other offensive weapon, and while having his face so painted, discolored, or covered, or otherwise concealed, or having his person so disguised, as aforesaid, shall be punished by imprisonment in the county jail, for a term not exceeding one year, or by a fine in a sum not exceeding two hundred and fifty dollars, or by both such fine and imprisonment, or by imprisonment in the state prison for two years, in the discretion of the court before whom such conviction shall be had.

CHAPTER XXI.

Births, Marriages and Deaths.

CHAP. 152.

AN ACT providing for the registry of births, marriages and deaths.

PASSED April 28, 1847.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. The clerks of the several school districts of this state organized according to law, and where there shall be no clerk, or he shall be incapable of acting, the trustees or one of them of such district shall annually, on or before the fifteenth day of January in each year, ascertain from the most accurate means of information in their power, and report in writing to the town clerk of the town, or one of the aldermen of the ward in which the school house of their district shall be situated, or in the city of New York to the city inspector, under appropriate heads, and in such forms as shall be prescribed by the secretary of state, the number of births, marriages and deaths which have occurred in their districts respectively, during each year preceding the first day of January, the month and day of their occurrence, the names and residences of the persons so married or dying, and the names of the parents of such children born during the year, the sex, color and names of the children, name and residence of the officer or clergyman performing the marriage ceremony in cases of marriage, the age of the persons who shall have

Duty of
clerks of
school dis-
tricts.

PART I.

married or died during the year aforesaid, and the particular disease or cause of their death. The report of all marriages and births in the city of New York shall be reported direct to the city inspector, and in case there is no physician or midwife in attendance at any birth, then the parents shall be required to report to the city inspector within one month, and all deaths in the city of New York shall be reported to the city inspector as at present, every week.

Duty of
town clerks
and alder-
men in
cities.

§ 2. It shall be the duty of the town clerk of each of the towns in this state, or of any alderman receiving the report as above specified, within fifteen days after the receipt thereof, to record the same in a book to be provided by him for that purpose, and to transmit a copy thereof, or of an abstract thereof in such form as shall be prescribed by the secretary of state, to the county clerk or city inspector, whose duty it shall be within fifteen days after the receipt thereof to forward an abstract duly certified by him, in such form as shall be prescribed as aforesaid, to the secretary of state, who shall file the same in his office, make a complete abstract thereof, and transmit the same to the legislature as soon as may be practicable thereafter.

Duty of
clergymen,
magistrates
physicians
and mid-
wives.

§ 3. It shall be the duty of clergymen, magistrates and other persons who perform the marriage ceremony, to keep a registry of the marriages celebrated by them, and to ascertain as far as practicable and note the ages of the persons married and the time thereof, and their places of birth and their residences in such registry. It shall also be the duty of physicians and professional midwives to keep a registry of the several births in which they have assisted professionally, and the time of such birth, sex, color and the residence of the parents; and physicians who have attended deceased persons in their last sickness, clergymen who have officiated at the funeral, and sextons who have buried deceased persons, to keep a registry of the name, age and residence of such deceased persons and the times of their death. It shall be the duty of such physicians, magistrates, clergymen and sextons to allow the clerks of the school districts within which they respectively reside, to inspect such registries from time to time, and to furnish them such other information in their power as may be necessary to enable such clerks to make the returns by this act.

Allowance
to be made
for services.

§ 4. For the performance of the duties herein required, the officers of the several districts, towns and counties rendering the services herein specified, shall be entitled to such compensation for their services and expenses incurred by them, as may be audited and allowed by the boards of supervisors of such counties respectively.

CHAP. 75.

AN ACT to amend an act entitled "An act providing for the registry of births, marriages and deaths."

PASSED April 2, 1853.

The People of the State of New York. represented in Senate and Assembly, do enact as follows:

§ 1. It shall be the duty of the clergymen, magistrates and other persons who perform the marriage ceremony in the city of New York, to keep a registry of the marriages celebrated by them, which shall contain, as near as the same can be ascertained, the name and surname of the parties married; the residence, age and condition of each; whether single or widowed. It shall also be the duty of physicians and professional midwives to keep a registry of the several births in which they have assisted professionally, which shall contain, as near as the same can be ascertained, the time of such birth, name, sex and color of the child, the names and residence of the parents, and to report the same, on or before the first Monday of each and every month, to the city inspector of the city of New York; and physicians who have attended deceased persons in their last illness shall, in the certificate of the decease of such person, specify, as near as the same be ascertained, the name and surname, age, occupation, term of residence in said city, place of nativity, condition in life; whether single, married, widow or widower; color, last place of residence, and the direct and indirect cause of death of such deceased person; and the coroners of the city and county of New York, in such cases as an inquest may have been held, shall in their certificates conform to the requirements of this section of this act.

Registry to be kept by clergymen and others, and report to city inspector, New York.

§ 2. The city inspector of the city of New York shall keep a record of the births, marriages and deaths reported to him; the births shall be numbered and recorded in the order in which they are received by the recording officer; and the record of births shall state, in separate columns, the place and date of birth, the name, sex and color of the child, the names and residences of the parents, as fully as he has received the same, and the time when the record was made. The marriages shall be numbered and recorded in the order in which they are received by the recording officer, and the record thereof shall state, in separate columns, the date of marriage, name, residence and official station, if any, of the person by whom married, the names and surnames of the parties, age, the color and condition of each; whether single or widowed; and the time when the record was made. The deaths shall be likewise numbered; and recorded and the record thereof shall state, in separate columns, as far as the same is reported,

City Inspector of New York to keep a record.

PART I.

the date of decease, name and surname, condition; whether single, married or widowed; age, place of birth, place of death, occupation, names of the parents, when an infant without name, disease, direct or indirect cause of death, color, and last place of residence of such deceased person, and the time when the record was made.

Report to
be made to
secretary of
state.

§ 3. It shall be the duty of the city inspector of the city of New York, on the third Monday in each month, to transmit an abstract of his registry of marriages, births and deaths for the month next preceding, duly certified, to the secretary of state.

Compensa-
tion of city
inspector.

§ 4. The city inspector of the city of New York, for his services as required by this act, shall be entitled to receive such fees for recording each birth, marriage or death, as the board of supervisors of the city of New York may establish; the fees for recording of births being payable by the board of supervisors, and the recording of marriages by the person reporting the same, it being provided that the fee for recording each birth or marriage shall not exceed the sum of ten cents.

Fees.

§ 5. Every clergyman, magistrate or other person solemnizing a marriage, and reporting the same in accordance with this act, shall be entitled to demand and receive for the same from the parties, the sum of at least one dollar, out of which he shall pay the fee for recording such marriage.

Secretary of
state to fur-
nish inspec-
tor with
forms.

§ 6. The secretary of state shall prepare and furnish to the city inspector of the city of New York, blank forms of returns, as herein before specified, and shall accompany the same with such instructions and explanations as may be necessary and useful, and he shall receive the said returns and prepare from them such tabular results, with remarks thereon, as will render them of practical utility, and shall make a report thereof annually to the Legislature.

Penalty for
not comply-
ing with the
directions
of this act.

§ 7. Every person who shall neglect or refuse to comply with or violate the provisions of this act, shall forfeit and pay for each offence the sum of fifty dollars, to be sued for and recovered in the name of the mayor, aldermen and commonalty of the city of New York, and the penalty when recovered shall be paid over, one-half thereof to the corporation of the city of New York, and one-half to the party making complaint thereof.

Repeal.

§ 8. All such parts of the act entitled "An act providing for the registry of births, marriages and deaths," passed April 28, 1847, as relates to the city of New York, conflicting or inconsistent with the provisions of this act, is hereby repealed.

Act to take
effect 1st
July, 1853.

§ 9. This act shall take effect on the first day of July next, before which time the secretary of state shall cause a copy of the same to be officially published in at least one of the papers published in the city of New York, with a notice to all magistrates, clergymen, physicians and other persons interested, of the time when it will become a law.

CHAPTER XXII.

Changing Names.

CHAP. 464.

AN ACT to authorize persons to change their names.

PASSED December 14, 1847.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. Any person residing in any county of this state, except in the city and county of New York, may apply to the county court of such county, and any person residing in the city of New York, may apply to the court of common pleas of the city and county of New York, for an order to authorize such applicant to assume another name. If said applicant be a minor he shall apply by guardian or next friend.

Application to whom made to change names.

Thus amended by Laws of 1860, ch. 80.
2 Hilt., 566.

§ 2. Such application shall be by petition which shall set forth the grounds of the application, and shall be verified by the affidavit of the applicant annexed thereto or endorsed thereon.

Petition to state grounds of application.

§ 3. If the court to which such application shall be made shall be satisfied by such petition, so verified, or by affidavits presented, that there is no reasonable objection that such person should assume another name, such court shall make an order authorizing such applicant to assume such other name, from and after some time not less than thirty days, to be specified in such order. It shall be the duty of the county clerks for the several counties of this state, except the city and county of New York, and of the clerk of the court of common pleas for the city and county of New York, annually, in the month of December, to make a return to the office of the secretary of state of all changes of names of persons made under and by virtue of this act; and the names of such persons before and after such changes, as the same shall appear in such returns shall be published in a tabular form with the Session Laws of each year.

Duty of county clerks.

Thus amended by Laws of 1860, ch. 80.

§ 4. Within ten days after granting such order, such applicant shall cause a copy thereof to be published in a public newspaper printed in the county in which he shall reside at the time of making such application.

Order to be published.

§ 5. Within twenty days from the granting of such order, such applicant shall cause such petition, affidavit or affidavits

Documents to be filed and record.

PART I.
ed in coun-
ty clerk's
office.

New name
when to be
assumed.

Saving
clause.

order and an affidavit of the publication of such order to be filed and recorded in the county clerk's office of the county in which such applicant shall reside at the time of making such application.

§ 6. When the requirements of this act shall be complied with, the applicant shall from and after the day specified for that purpose in such order be known by the name which by such order he shall be authorized to assume, and by no other.

§ 7. If any suit or legal proceeding shall be commenced by his former name, against any person whose name shall have been changed pursuant to this act, such suit or proceeding shall not be abated, nor any relief or recovery sought thereby, be prevented by such misnomer, but the plaintiff or party instituting such suit or proceeding may amend in respect to the name of the person against whom it shall be commenced, at any time and without costs.

See the following cases on this topic: 1 H., 102; 16 W., 611; 11 W., 522; 10 Pai., 170; 9 Cow., 140; 4 Cow., 148; 2 Cow., 463; 15 J. R., 226; 12 J. R., 77; 10 J. R., 133; 7 J. R., 549; 5 J. R., 84; 3 Cai., 219; 2 Cai., 164, 362.

CHAPTER XXIII.

Seamen.

CHAP. 234.

AN ACT to provide for sick and disabled Seamen.

PASSED April 22, 1831.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Money col-
lected
where to be
paid.

§ 1. From and after the passage of this act, the respective sums of money now levied and collected by law upon masters, mates, mariners, and seamen, arriving at the city and port of New York, shall be collected and paid over to the trustees by this act constituted, to be denominated, "The Trustees of the Seamen's Fund, and Retreat in the city of New York."

As amended by Laws of 1854, ch. 172.

Seamen's
retreat to
be erected.

§ 2. As soon after the passage of this act as may be convenient, there shall be constructed by and under the direction of the said trustees, within the counties of New York, Richmond or Kings, on some suitable and healthy spot, a convenient building or buildings as the state of the funds may admit; or the said trustees may hire such buildings as they may deem necessary and proper, to be called the "Seamen's Retreat," which shall be exclusively appropriated to and for the use of sick and disabled seamen.

[Residue of this section repealed by Laws of 1854, ch. 172.]

§ 5. And the said trustees shall, without unnecessary delay, appropriate the money so collected to the erection or otherwise providing a suitable hospital or other buildings as aforesaid, for the accommodation of sick and disabled seamen; and the said trustees shall, after deducting all necessary expenses of said retreat, annually invest any balance remaining in their hands in such manner as the said trustees may deem for the best interests of those from whom said money has been collected.

CH. XXIII.
Hospital to
be erected.

[Sections 3 and 4 and part of section 5 repealed by Laws of 1854, ch. 172.]

[Sections 6 and 7 repealed by Laws of 1854, ch. 172.]

[Section 8 temporary.]

§ 9. So much of section seven of title four of chapter fourteen of the first part of the Revised Statutes, as authorizes the commissioners of health of the marine hospital to receive and collect hospital money from masters, mariners, or seamen, of all vessels arriving in the port of New York, is hereby repealed; but nothing contained in this act shall prevent said health commissioners from collecting from the master of every vessel such sums as may be due from such master for any steerage or cabin passenger as provided in the seventh section of title four above mentioned. Repeal.

[Sections 10, 11, 12, repealed by Laws of 1854, ch. 172.]

[Section 13 temporary.]

CHAP. 373.

AN ACT to amend an act entitled "An act to provide for sick and disabled seamen," passed April 22, 1831.

PASSED November 16, 1847; "three-fifths being present."

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. As soon after the passage of this act as may be convenient, there shall be provided by the trustees of the "Seamen's fund and retreat in the city of New York," on the grounds now owned by said institution, a suitable building or buildings, which shall be exclusively appropriated to and for the use of the following persons, viz.:

Buildings
to be pro-
vided.

The destitute, sick or infirm mothers, wives, sisters, daughters or widows of seamen: but no person shall be received into the retreat unless satisfactory proof be furnished to the trustees that the husband, brother, son or father of the applicant, as the case may be, hath previous to the time of making such application to be admitted, paid the tax imposed by law on seamen arriving at the port of New York, for the term of two years.

For what
persons.

§ 2. The sum of ten thousand dollars is hereby appropriated out of so much of the surplus of the moneys paid to the credit of the mariner's fund, as was excepted from the operation of

Appropriation.

PART I.

the act entitled an act concerning passengers in vessels arriving at the city of New York, by the trustees of the seamen's fund and retreat, to defray the expenses which may be incurred by the trustees aforesaid, in carrying out the foregoing provisions of this act. And the said trustees are hereby authorized and directed to provide annually for the support and care of the persons mentioned in this act, out of any funds which shall accrue in their hands, levied and collected by law upon "masters, mates, mariners and seamen arriving at the city and port of New York, over and above what shall be required to meet the current charges for the support of the seamen's retreat."

Additional attendants may be appointed.

Proviso.

§ 3. The said trustees shall have power to appoint such additional attendants as may be required in the said retreat for females; and to fix the amount of salary or other compensation which shall be allowed to them; and to make such rules and regulations for the government of said retreat as they may from time to time deem necessary. Provided, that the board of managers of the mariner's family industrial society, of the port of New York may recommend to the said trustees suitable persons to be employed as matrons, nurses and assistants in the said retreat, and provided also, that the said society may recommend upon such conditions as shall be prescribed by the trustees aforesaid, persons to be relieved from said fund or received into the said retreat for females, subject to the approval of the said trustees.

Trustees to report annually to the comptroller.

§ 4. The said trustees shall annually on the first Monday of January, render to the comptroller of the state, an exact and minute specification of the purposes to which the money appropriated and directed to be disbursed by this act has been applied, and the items expended for each object; also, they shall state the number of persons relieved from said fund or received into the said retreat for females; the number discharged; the number then remaining in said retreat, and the number of those who applied for admission and were rejected.

Certain payments not to be made after the passage of this act.

§ 5. After the passage of this act, the said trustees of the seamen's fund and retreat, and the said fund and retreat shall be discharged from the payment to the commissioners of health of the city of New York, or to the fund collected from passengers, all sums of money heretofore loaned by the said commissioners of health out of the fund collected from passengers, to the said trustees of the seamen's fund and retreat, by virtue of the act entitled "An act to enable the trustees of the seamen's fund and retreat to borrow money from the passengers' fund," passed February thirteen, one thousand eight hundred and forty-six, and by virtue of the act entitled "An act to enable the trustees of the seamen's fund and retreat to borrow money from the passengers' fund," passed April 6, 1837.

§ 6. All laws and parts of laws now in force inconsistent with the provisions of this act are hereby repealed.

CH. XXIII.
Repeal.

CHAP. 52.

AN ACT to amend the act entitled "An act to provide for sick and disabled seamen," passed April 22, 1831, also to amend the several acts passed November 16, 1847, and April 11th, 1849, amendatory of the said act.

PASSED March 17, 1851; "three-fifths being present."

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. The mayor of the city of New York, the president of the chamber of commerce of the city of New York, the president of the Marine society of the port of New York, together with the board of counsellors of the Mariners' Family Industrial society, of the city and county of New York, and their successors are hereby constituted a board of trustees for the purposes named in the acts entitled "An act to provide for sick and disabled seamen," passed April 22, 1831, and in the act entitled "An act to amend an act entitled an act to provide for sick and disabled seamen," passed April 22, 1831, passed November 16, 1847, and in the act entitled "An act to amend an act entitled an act to amend the act entitled an act to provide for sick and disabled seamen," passed April 22, 1831, passed November 16, 1847, passed December 14, 1847, also in the act entitled "An act to amend an act entitled an act to provide for sick and disabled seamen," passed April 22, 1831, passed April 11, 1849.

Board of
trustees
constituted.

§ 2. The trustees of the seamen's fund and retreat of the city of New York, shall pay over to the trustees above named, on demand, the sum of sixteen thousand one hundred and sixty-six dollars and thirty-one cents, paid to them by the comptroller of the state of New York, agreeably to the act passed December 14, 1847, entitled "An act to amend an act entitled an act to amend an act entitled an act to provide for sick and disabled seamen," passed April 22, 1831, passed November 16, 1847, and April 11, 1849, entitled "An act to amend an act entitled an act to provide for sick and disabled seamen," passed April 22, 1831, together with the interest thereon, which shall have accrued and which is unexpended.

\$16,166.31
to be paid
over to
said board.

§ 3. The board of trustees named in the first section of this act, shall from the funds so received from the trustees of the seamen's fund and retreat, apply so much thereof as may be necessary to the immediate erection of a suitable building and suitable furniture for the same, either on the grounds named in the act of November 16, 1847, entitled "An act to amend an act to provide for sick and disabled seamen," passed

Said money
how to be
expended.

PART I.

April 22, 1831, or any other suitable grounds as shall be deemed most expedient by the said board of trustees hereby created, for an asylum for the purposes named in said act last aforesaid, and the surplus, if any, shall be applied by the said trustees created by this act, for the relief of the persons whose relief is contemplated in the aforesaid act.

Repeal.

§ 4. All laws and parts of laws now in force, inconsistent with the provisions of this act, are hereby repealed.

CHAP. 172.

AN ACT in relation to the moneys levied by law on masters, mates, mariners and seamen arriving at the city and port of New York, and the disposal of the same by the trustees of the Seamen's Fund and Retreat.

PASSED April 7, 1854.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Trustees.

§ 1. The trustees of the Seamen's Fund and Retreat, in the city of New York, shall consist of the following persons, who shall be residents of the city and county of New York or of the counties of Kings, Queens or Richmond, namely: The mayor of the said city, the health officer of the city and port of New York, the president of the Seamen's Savings Bank and the president of the Marine Society, in the said city, and their successors in office for the time being, and seven other persons to be appointed by the governor of this state, by and with the consent of the senate, for the term of three years, four of which seven shall be or shall have been ship masters, who shall be a corporate body for the purposes of this act; vacancies shall be supplied by appointment or by succession in office in the same manner as aforesaid.

Officers and their compensation.

§ 2. The said trustees shall choose one of their number to be president, and shall appoint a secretary to hold his office during the pleasure of the trustees; the trustees shall receive no compensation for their services; the secretary and collector shall receive compensation, to be fixed from time to time by the trustees. The secretary shall take the oath of office, and shall give bonds to the satisfaction of the trustees for the performance of the duties of his office. The trustees may, from time to time, make rules and regulations for their own government, for the control, management and government of the persons in employment under them, and of the persons who shall be received into the said retreat, and for the receiving and discharging of such persons. The secretary shall keep the accounts and books of account of the institution, shall examine the accounts which the collector shall render to him weekly, and shall receive the balances in his hands and

By-laws.

Accounts.

deposit the same immediately to the credit of the trustees aforesaid, as they shall direct, and shall perform such other duties, as secretary, as the board of trustees shall from time to time direct; or the said trustees of the Seamen's Fund and Retreat may dispense with the appointment of the collector and all that appertains to his duties, and advise and direct such mode or modes of collecting and receiving the hospital tax as by them shall be deemed most expedient, either through the custom-house or otherwise, with the right of deducting, for the expenses of collecting and receiving the same, a commission not exceeding two and a half per cent.

§ 3. The title of all lands acquired or held by them shall be vested in the people of this state. The Seamen's Retreat shall be exclusively in charge of the trustees aforesaid, and appropriated to the use of sick and disabled seamen; but no person shall be admitted into the same without satisfactory proof that he hath previously paid the tax imposed by law on masters, mates or seamen arriving at the port of New York.

Title of
land to vest
in the state.

§ 4. The said board of trustees shall appoint the needful physicians, assistants, nurses, attendants and servants of the said hospital and retreat; regulate their salaries and wages, apply the funds coming into their hands for the payment of the same, and may discharge the same persons from time to time; they shall also, out of such funds, defray all needful expenditures, but shall not have power to erect any new hospital or dwelling without warrant of the Legislature.

Physicians,
nurses, &c.

§ 5. The president of said trustees shall demand and be entitled to receive, and in case of neglect or refusal to pay, shall sue for and recover, in the name of the people of this state, the following sums, from either the owner or owners, or from the master, or from both such owner or owners and master of every vessel that shall arrive at the port of New York, namely:

Moneys,
from whom
to be col-
lected.

First. For every vessel from a foreign port—for the master, one dollar and fifty cents; for each mate, one dollar; for each sailor or mariner, fifty cents.

Second. For every coasting vessel—for each person on board composing the crew of such vessel, twenty cents; but no coasting vessel from the state of New Jersey, Connecticut or Rhode Island, shall pay for more than one voyage in each month, computing from the first voyage in each year.

And the said president may sue the said owner or owners, or the said masters, or both such owner or owners and master, for the penalties imposed by law, on masters of coasting vessels, for non-payment of hospital moneys.

Thus amended by Laws of 1858, ch. 323.

§ 6. The health officers shall not grant a permit to any vessel, subject to quarantine, to approach the city of New York beyond the place assigned for quarantine, until satisfactory evidence shall be adduced that all hospital money

Hospital
money to
be paid, or
vessel not
allowed to
enter port.

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demanded from the master of such vessel has been duly paid, or until satisfactory security be given that the same will be paid.

Sick and disabled seamen.

§ 7. It shall be the duty of the said trustees to contract with the health commissioners for the support of sick and disabled seamen who were subject to quarantine, and shall pay to the said commissioners the reasonable expenses, so contracted for, of all such sick and disabled seamen during the time they shall be subject to quarantine and remain at the marine hospital under their direction.

Expenses incurred by the county of Richmond to be paid.

§ 8. The said trustees shall pay to the supervisors of the county of Richmond all fees, expenses and charges which may be incurred by the said county for the transportation, confinement, trial or maintenance of any mariner or seafaring person charged with the commission of any crime or misdemeanor within the limits of said retreat, or who shall be under the charge of the said trustees, which expenses shall be paid by the said trustees upon the order in writing of the said supervisors, and duly attested by the affidavit of the clerk of the said county.

Account to be rendered to comptroller.

§ 9. The said trustees shall annually render to the comptroller of the State of New York an account of all moneys collected or received by them, and of all expenditures thereof, and of all the surplus moneys, if any, in their hands, and the disposition thereof by them made; which accounts shall specify particularly the sources from which the moneys have been received, and the purposes to which the same have been applied, and shall be verified by the president and secretary of the said trustees, and rendered on the first Monday of January, yearly. They shall also specify the number of seamen received into the retreat, and of those discharged therefrom or deceased, and the number remaining, and the number and class of deceases, and the average time of treatment of each patient, and the daily cost to the fund for each patient.

Ten per cent to be paid to Mariners' Family Asylum.

§ 10. The trustees of the Seamen's Fund and Retreat, in the city of New York, are hereby authorized and instructed to pay over monthly, to the treasurer of the Mariners' Family Asylum, for the maintenance of said asylum, ten per cent of the amount of moneys collected the previous month, by law, upon masters, mates, mariners and seamen arriving in the city and port of New York.

§ 11. All acts and parts of acts, inconsistent with this act, are from henceforth superseded by this act.

CHAP. 199.

AN ACT in relation to the moneys levied by law on masters, mates, mariners and seamen arriving at the city and port of New York, and the disposal of the same by the trustees of the Seamen's Fund and Retreat, and of the Mariners' Family Asylum.

PASSED April 12, 1854.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. The Mariners' Family Industrial Society of the port of New York, together with their board of counsellors and their successors in office for the time being, shall have the control and management of the building erected on the grounds of the Seamen's Retreat, agreeably to an act passed March 17th, 1851, and known as the "Mariners' Family Asylum," and the ground selected by the committee on the ninth day of May, eighteen hundred and fifty-one, and approved of by the trustees of the Seamen's Fund and Retreat, and also the right of way to and from said asylum through the grounds of the Seamen's Retreat until a public street or highway shall be opened, and then such ingress and egress shall be by said street or highway. Asylum.

§ 2. The trustees of the Seamen's Fund and Retreat, in the city of New York, are hereby authorized and directed to pay over, monthly, to the treasurer of the Mariners' Family Asylum, for the maintenance of said asylum, ten "per cent" of the amount of moneys collected the previous month by law upon masters, mates, mariners and seamen arriving at the city and port of New York. Ten per cent to be paid to Family Asylum.

§ 3. The above named society, together with their board of counsellors, shall apply such hospital moneys as shall come into their hands, through the trustees of the Seamen's Fund and Retreat, for the support and relief of destitute, sick or infirm mothers, wives, sisters, daughters or widows of seamen in said asylum, and at such other places as shall by them be deemed best calculated to promote the objects of this section of this act; but no person shall be relieved from said fund, or received into said asylum, unless satisfactory proof be furnished to the society that the husband, brother, son or father of the applicant, as the case may be, hath, previous to the time of making such application to be admitted, paid the tax imposed by law on seamen arriving at the port of New York for the term of two years. Money, how applied.

§ 4. The said society, together with their board of counsellors, shall have power to appoint such attendants, matrons, nurses and assistants as may be required in said asylum for females, and to fix the amount of salary or other compensation which shall be allowed to them, and to make such rules Employees and their pay

PART I.

and regulations for the government of said asylum as they may from time to time deem necessary; and said society shall annually, during the month of January, render to the comptroller of the State of New York an exact and minute specification of the purposes to which the moneys appropriated and directed to be disbursed by this act have been applied; also, they shall state the number of persons relieved from said fund, or received into the said asylum for females, the number discharged, the number remaining in said asylum, certified by the president and secretary of the board of counsellors.

§ 5. All acts and parts of acts inconsistent with this act are hereby repealed.

CHAPTER XXIV.

Aliens.

CHAP. 72.

AN ACT to enable aliens to purchase and hold real estates within this state, under certain restrictions therein mentioned.

PASSED April 2, 1798.

Convey-
ances to
aliens valid

§ 1. *Be it enacted by the People of the State of New York, represented in Senate and Assembly,* That all and every conveyance or conveyances, hereafter to be made or executed to any alien or aliens, not being the subject or subjects of some sovereign state or power, which is or shall be, at the time of such conveyance, at war with the United States of America, shall be deemed valid to vest the estate thereby granted, in such alien or aliens; and it shall and may be lawful to and for such alien or aliens, to have and to hold the same, to his, her, or their heirs and assigns forever, any plea of alienism to the contrary notwithstanding: *Provided always,* That it shall not be lawful for any such alien, or the heirs or assigns of any such alien, being aliens, to reserve any rent or service whatsoever, upon any grant, lease, demise or conveyance whatsoever, to be made of any such lands or tenements; and all rents, payments, services or reservations whatsoever, which shall be reserved or made payable in, or by or in consequence of any such grant, lease, demise or conveyance whatsoever, of any such lands or tenements, shall be utterly void and of no effect.

7 N. Y., 305; 28 B., 653; 8 Pal., 433; 6 Pal., 448; 5 Pal., 114; 5 Cow., 314, 394; 2 Ed., 585; 1 Ed., 512; 1 S. Ch., 139; 13 W., 458, 546; 7 W., 367; 4 W., 511; 2 J. C. R., 508; 20 J. R., 707; 16 J. R., 210; 11 J. R., 418; 10 J. R., 69, 117, 183; 9 J. R., 303; 1 J. Ca., 399.

Such con-
veyances to
be recorded

§ 2. *And be it further enacted,* That all and every deed or deeds, conveyance or conveyances, to be executed in pursu-

ance of this act shall be recorded within twelve months after the day of the date of the same, in the secretary's office of this state; and in default thereof, the grantees named in any such deed or conveyance, shall be considered in all respects as aliens, and the lands and tenements thereby conveyed, shall enure to the use of the people of this state.

§ 3. *And be it further enacted*, That this act shall be and remain in force for the term of three years from and after the passing thereof, and no longer.

Limitation.

CHAP. 25.

AN ACT declaratory of the construction and intent of the act, entitled "An act to enable aliens to purchase and hold real estates within this state, under certain restrictions therein mentioned," and to amend the same.

PASSED March 5, 1819.

§ 1. *Be it enacted and declared by the People of the State of New-York, represented in Senate and Assembly*, That all and every the deed and deeds, conveyance and conveyances, of or for any lands or tenements within this state, made to any alien or aliens, in pursuance of the act, entitled "An act to enable aliens to purchase and hold real estates within this state, under certain restrictions therein mentioned," passed the 2d day of April, one thousand seven hundred and ninety-eight, so far forth as relates to any question or plea of alienism, shall be deemed and adjudged valid and effectual to vest all and singular the lands and tenements described in, and intended to be conveyed by such deed or deeds, conveyance or conveyances, in the several grantees therein named, and their heirs and assigns, according to the nature of the estates thereby created, and in such manner as to authorize the said several grantees, and their respective heirs and assigns, being aliens, effectually to give, devise, grant, sell and convey the same, in fee or otherwise, to any other alien or aliens, not being the subject or subjects of some sovereign state or power, then at war with the United States of America, any thing in the said act contained, or any plea of alienism to the contrary notwithstanding.

Effect of former act.

7 N. Y., 305; 13 W., 458.

§ 2. *And be it further enacted*, That all and every the mortgage or mortgages of and upon any of the said lands and tenements, which have been or may hereafter be taken by the said grantees, or any of them, in order to secure the whole or any part of the consideration money arising on any sale or sales of the said lands and tenements, or any of them, shall be in like manner valid and effectual; and it shall and may be lawful for the mortgagees therein named, or any of them,

Certain aliens may take mortgages.

PART I.

their or any of their heirs or assigns, to re-purchase any of the said lands and tenements, on any sale or sales to be thereof made by virtue of any power contained or to be contained in any such mortgages, or by virtue of any judgment, order or decree of any court of law or equity, rendered or made, or to be rendered or made, in order to enforce the payment of such consideration money, or any part thereof, and to hold the same lands and tenements in like manner, and with the like authority, as is herein before expressed.

CHAP. 49.

AN ACT to enable aliens to purchase and hold real estates within this state, under certain restrictions therein mentioned.

PASSED March 26, 1802.

Preamble.

WHEREAS many good and industrious persons, being aliens, have emigrated to this state, with an intention to settle and reside therein, and have expended the greater part of their capital in purchasing and improving real property; and whereas such emigrations have tended to promote as well an improvement in the agriculture as the manufactures of the state, and it is deemed just and right not only to protect the property which they have acquired, but also to encourage others to settle and reside within this state, by enabling them to purchase and hold real property: Therefore,

Purchases
of lands by
alien inhab-
itants,
valid.

§ 1. *Be it enacted by the People of the State of New York, represented in Senate and Assembly,* That all purchases of lands made or to be made by any alien or aliens who have come to this state and become inhabitants thereof, shall be deemed valid to vest the estate to them granted; and it shall and may be lawful to and for such alien or aliens, to have and to hold the same to his, her or their heirs or assigns for ever, and to dispose of the same, any plea of alienism to the contrary thereof notwithstanding: *Provided,* That any purchase hereafter to be made by any such alien, does not exceed one thousand acres.

7 N. Y., 305; 21 W., 61; 20 W., 230, 336; 16 W., 619; 7 W., 367; 5 Cow., 713; 1 Cow., 89.

Aliens may
take mort-
gages.

§ 2. *And be it further enacted,* That in case any alien or aliens shall sell and dispose of any real estate, which by law they are entitled to hold and dispose of, or which they may hereafter hold in virtue of this act, such alien or aliens, his, her or their heirs or assigns, shall and may, and are hereby declared capable of taking a mortgage in his, her or their own name or names, as a collateral security for the purchase money due thereon, or any part thereof.

16 W., 619.

§ 3. *And be it further enacted*, That the title of any citizen or citizens of this state, to any land or lands within this state, heretofore conveyed to such citizen or citizens, and now in the actual possession of such citizen or citizens, shall not be questioned or impeached by reason of the alienism of any person or persons from or through whom such title may have been derived: *Provided*, That nothing in the said last clause contained, shall extend to the military or bounty lands so called, in the counties of Onondaga and Cayuga.

OH. XXIV.
Titles of
lands deriv-
ed from
aliens not
to be im-
peached.

§ 4. *And be it further enacted*, That all and every conveyance or conveyances executed in pursuance of the act, entitled "An act to enable aliens to purchase and hold real estates within this state, under certain restrictions therein mentioned," and which have not been recorded agreeably to the directions of the said act, shall and may be recorded within twelve months after the passing of this act; and the lands thereby conveyed, shall not, in such case, enure or be deemed to enure to the use of the people of this state.

Time for re-
cording cer-
tain con-
veyances
extended.

CHAP. 109.

AN ACT for the payment of certain officers of government, and for other purposes.

PASSED April 10, 1804.

§ 31. *And be it further enacted*, That all the provisions in favor of aliens, contained in the act, entitled "An act to enable aliens to purchase and hold real estates within this state, under certain restrictions therein mentioned," passed the twenty-sixth day of March, one thousand eight hundred and two, shall be, and hereby are extended to all aliens who shall have come to this state, and become inhabitants thereof, at the time of passing this act.

Privileges
of certain
acts ex-
tended to
aliens, &c.

CHAP. 25.

AN ACT to extend the act, entitled "An act to enable aliens to purchase and hold real estates within this state, under certain restrictions therein mentioned."

PASSED March 2, 1805.

§ 1. *Be it enacted by the People of the State of New York, represented in Senate and Assembly*, That all the provisions in favor of aliens, contained in the act entitled "An act to enable aliens to purchase and hold real estates within this state, under certain restrictions therein mentioned," passed the 26th of March, 1802, shall be, and hereby are extended to all aliens who may have come into this state, and become

Further ex-
tended.

PART I.

inhabitants thereof, at the close of the present session of the legislature.

CHAP. 123.

AN ACT to enable certain persons therein named, to purchase and hold real estate.

PASSED April 4, 1807.

Titles
through
aliens.

§ 2. *And be it further enacted*, That the title of any citizen or citizens of this state, to any land or lands within this state, heretofore conveyed to such citizen or citizens, and now in the actual possession of such citizen, shall not be questioned or impeached by reason of the alienism of any person or persons from or through whom such title may have been derived.

CHAP. 175.

AN ACT to extend the act, entitled "An act to enable aliens to purchase and hold real estates within this state, under certain restrictions therein mentioned."

PASSED April 8, 1808.

Act of 1808
extended.

§ 1. *Be it enacted by the People of the State of New York, represented in Senate and Assembly*, That all the provisions in favor of aliens, contained in the act, entitled "An act to enable aliens to purchase and hold real estates within this state, under certain restrictions therein mentioned," passed the 26th day of March, one thousand eight hundred and two, shall be, and hereby are extended to all aliens who may have come into this state, and become inhabitants thereof, at the close of the present session of the legislature.

20 W., 230.

May take
by devise
or descent.

§ 2. *And be it further enacted*, That all persons authorized to acquire real estate by purchase by this act, or the act hereby extended, may also take and acquire by devise or descent: *Provided*, That nothing herein shall be construed to confer on them any other rights appertaining to natural born citizens, except those of taking, holding, and disposing of real property within this state.

12 N. Y., 376; 2 H., 67.

CHAP. 171.

AN ACT to enable Resident Aliens to hold and convey
Real Estate.

PASSED April 15, 1830.

*The People of the State of New York, represented in Senate
and Assembly, do enact as follows:*

§ 1. Any resident alien who has purchased and taken a conveyance for any lands or real estate within this state, before making and filing the deposition or affirmation in writing, required by the provisions of title one of chapter one of the second part of the Revised Statutes of this State, may continue to hold such lands and real estate, in the same manner, and with the like effect as he would have done if such purchase had been made, and conveyance taken after the making and filing of the deposition or affirmation in the said title and chapter specified: But to entitle any such alien to the benefits of the provisions of this section, such alien, at the expiration of one year from the passing of this act, shall have made and filed such deposition or affirmation as is required by the provisions of the aforesaid title; otherwise this section shall be of no force or effect whatever, as it regards such alien.

Aliens may
take and
hold lands.To file de-
position.

10 W., 379.

§ 2. Every grant, contract or mortgage, heretofore made and executed by any such alien, to and with any citizen of the United States, shall be deemed and considered as valid and effectual, as if such grant, contract or mortgage, had been made by a citizen of this state.

Grants,
contracts,
&c.

4 Ed., 395.

CHAP. 87.

AN ACT to enable resident aliens to hold and convey real
estate.

PASSED April 10, 1843.

*The People of the State of New York, represented in Senate
and Assembly, do enact as follows:*

§ 1. Any naturalized citizen of the United States, who may have purchased and taken a conveyance for any lands or real estate within this state, or to whom any such lands or real estate may have been devised, or to whom they would have descended if he had been a citizen at the time of the death of the person last seized, before he was qualified to hold them by existing laws, may continue to hold the same in like manner as if he had been a citizen at the time of such purchase, devise or descent cast; and all conveyances, by

Title con-
firmed in
certain
cases.

PART I.

deed or mortgage, heretofore made by such naturalized citizen, are hereby confirmed.

3 S. S. C., 79; 10 W., 9.

Titles of resident aliens for five years.

§ 2. Any alien, who, being at the time an actual resident of the United States, may have heretofore purchased and taken a conveyance of any such lands or real estate, or to whom they may have been devised, or to whom they would have descended if he had been a citizen at the time of the death of the person last seized; and any such alien who may hereafter purchase and take a conveyance of any such lands or real estate, or to whom the same may be devised, or to whom the same would descend if he were a citizen, and who have already filed or shall within one year from the passage of this act, or within one year from the time of such purchase, devise or descent cast, file the deposition or affirmation specified in the fifteenth section, article second, chapter first, part second, of the Revised Statutes, may hold or convey such land or real estate during the term of five years from the passage of this act, in the same manner as if he were a citizen of this state. And any conveyances by deed or mortgage heretofore made by any such alien, is hereby declared in like manner valid.

Saving clause.

§ 3. This act shall not affect the rights of the state in any case in which proceedings for escheat have been instituted; nor the rights of any person or persons, whose interest may have become vested in any such lands or real estate.

Rights of native Indians.

§ 4. Any native Indian may, after the passage of this act, purchase, take, hold and convey lands and real estate in this state, in the same manner as a citizen: and whenever he shall have become a freeholder, to the value of one hundred dollars, he shall be liable on contracts, and subject to taxation and to the civil jurisdiction of the courts of law and equity of this state, in the same manner and to the same extent as a citizen thereof.

Real estate.

§ 5. The words "real estate," as used in this act, comprehend equitable as well as legal estate.

CHAP. 115.

AN ACT to enable resident aliens to hold and convey real estate, and for other purposes.

PASSED April 30, 1845, by a two-third vote.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Aliens who acquired land before filing depositions.

§ 1: Any alien resident of this state, who has heretofore purchased and taken, or may hereafter purchase and take a conveyance of any lands or real estate within this state, or to whom any lands or real estate has been or may hereafter be

devised, before making and filing in the office of secretary of state, the deposition or affirmation in writing, specified in the fifteenth section of the first title in the first chapter of the second part of the Revised Statutes, may, on making and filing such deposition or affirmation, hold the real estate granted, conveyed or devised to such alien, in the same manner and with the like effect as if such alien at the time of such grant, conveyance, or devise, were a citizen of the United States.

5 N. Y., 136; 28 B., 328; 2 H., 67.

§ 2. The wife of any alien resident of this state, who has heretofore taken by conveyance grant or devise, any real estate, and become seized thereof, and who has died before the passing of this act, and the wife of any alien resident of this state, who may hereafter take by conveyance, grant or devise, any real estate within this state, shall be entitled to dower therein, whether she be an alien or citizen of the United States; but no such dower shall be claimed in lands granted or conveyed by the husband before this act shall take effect.

Rights of the wives of aliens.

§ 3. Any woman being an alien, who has heretofore married, or who may hereafter marry a citizen of the United States, shall be entitled to dower in the real estate of her husband, within this state, as if she were a citizen of the United States.

Right of dower of alien women.

3 D., 229; 21 W., 59; 16 W., 617; 10 W., 379.

§ 4. If any alien resident of this state who has purchased and taken, or hereafter shall purchase and take a conveyance of real estate within this state, has died, or shall hereafter die, leaving persons, who, according to the statutes of this state, would answer the description of heirs of such deceased alien, such persons so answering the description of heirs to such deceased alien, whether they are citizens or aliens, are hereby declared and made capable of taking and holding, and may take and hold as heirs of such deceased alien, as if they were citizens of the United States, the lands and real estate owned and held by such alien at his death, in the like manner and with the effect as if such alien at his death were a citizen of the United States; but if any of the persons answering the description of heirs to such alien, are males of full age, they shall not hold the real estate hereby made descendible to them as against the state, unless they are citizens of the United States, or, in case they are aliens, unless they make and file in the office of the secretary of state the deposition or affirmation mentioned in the first section of this act.

Heirs of deceased aliens capable of taking and holding real estate.

5 D., 550.

§ 5. Any resident alien of this state who has purchased and taken a conveyance, or who shall purchase and take a conveyance of real estate within this state, and has died or shall die after having devised or conveyed the same, the devisee or

Effect of conveyances by aliens who die.

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Aliens who
file deposi-
tions may
grant and
devise real
estate.

grantee of such real estate may take and hold, and is hereby declared capable of holding the real estate so granted or devised, whether such grantee or devisee be a citizen or alien, according to the nature and effect of such grant or devise; but no devisee or grantee of full age who is an alien, shall hold such real estate as against the state, unless he make and file in the office of the secretary of state the deposition or affirmation mentioned in the first section of this act.

§ 6. Any resident alien who has purchased and taken by deed or devise any real estate within this state, or who may hereafter purchase and take by deed or devise any real estate within this state, and who has made and filed, or shall make and file in the office of the secretary of state, the deposition in the first section of this act mentioned, may grant and devise such real estate to any citizen of the United States, or to any alien resident of this state, in the same way and to the like effect, and to and for the same purposes as if such alien were a citizen of the United States; but no resident male alien of full age shall hold any lands so granted or devised to him as against the state, unless he make and file in the office of secretary of state the depositions or affirmation in the first section of this act mentioned.

Alien
women may
hold land
by the will
of their
husbands.

§ 7. Every woman being an alien and resident of this state, is hereby declared to be, and is hereby made capable of taking and holding real estate under the will of her husband, or of any person capable of devising any real estate, and she is hereby declared to be and is hereby made capable of executing any and every power in respect to the real estate devised to her, and which may lawfully be created, the same as if she were a citizen of the United States.

Marriage
settle-
ments.

§ 8. Every woman being an alien and resident of this state, is hereby declared to be and is made capable of taking any and every beneficial interest or estate in any lands or real estate within this state, which has been or may be created in her favor, or for her benefit in any marriage settlement, or in any will or devise made by her husband, or of any person capable of devising real estate, subject to all the provisions of law, regulating the creation of uses and trusts.

Former de-
vises,
grants, &c.,
by aliens,
confirmed.

§ 9. Every grant, devise, demise, lease or mortgage of any lands within this state, heretofore made and executed in due form of law by an alien to any citizen of this state, or to any resident alien capable of taking and holding any real estate, or any beneficial interest therein within this state, or which may hereafter be made and executed by any resident alien capable of taking and holding real estate within this state, to any citizen of this state, or to any resident alien capable of taking and holding real estate, or any beneficial interest therein; and all rents reserved or hereafter reserved on any such lease or demise, and all lawful covenants and conditions in any such lease or demise, are hereby confirmed,

and shall be deemed and taken to be as valid and effectual, as if made by or between citizens of this state.

§ 10. All proceedings to recover lands held by a resident alien, by reason of his alienage, shall be suspended, on his filing in the office of the secretary of state the deposition or affirmation mentioned in the first section of this act, and on payment of the costs and charges of such proceedings, up to the time of serving a certified copy of such deposition or affirmation on the attorney-general of this state.

Effect of
filing alien
deposi-
tions.

§ 11. This act shall not affect the rights of this state in any case in which proceedings for escheat have been or shall before the making and filing the deposition or affirmation in the first section of this act mentioned, be commenced or the rights of any person or persons whose interests may have become vested in any such lands or real estate; but all proceedings commenced or hereafter commenced to recover lands, as for an escheat, held by resident alien, shall be subject to the provisions of the last preceding section.

Saving
clause.

§ 12. Every alien who shall hold any real estate by virtue of any of the foregoing provisions, shall be subject to duties, assessments, taxes and burthens, as if he were a citizen of the United States; but shall be incapable of voting at any election, or of being elected or appointed to any office, or of serving on any jury.

Duties of
aliens who
hold real
estate.

§ 13. The provisions of section nineteen, of title one, chapter first, part second of the Revised Statutes, are hereby made applicable to this act, and all the provisions of title twelve, chapter nine, part first of the Revised Statutes, inconsistent with the provisions of this act, are hereby repealed.

Revised
Statutes.

§ 14. The act entitled "An act concerning escheats," passed April 29, 1833, and the act therein referred to, entitled "An act concerning escheats, and to derive a revenue therefrom," passed April 26, 1832, are hereby repealed.

Repeal.

§ 15. Nothing herein contained shall prejudice the rights bona fide acquired by purchase or descent, without notice before this act shall take effect.

Saving
clause.

CHAP. 576.

AN ACT to extend the provisions of chapter one hundred and fifteen of the Laws of eighteen hundred and forty-five, in relation to aliens.

PASSED April 15, 1857.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. The several provisions of the act entitled "An act to enable resident aliens to hold and convey real estate, and for other purposes," passed thirtieth of April, eighteen hundred

PART I.

Depositions.

and forty-five, are hereby extended and applied to any such grant, demise, devise, lease or mortgage which are enumerated in said act, and which have been heretofore made, and shall be as effectual to pass the title thereto as though the persons by, from, or through whom the title shall have so passed, had been citizens of the United States, and as though the several provisions of said act had been as they hereby are re-enacted. The deposition or affirmation required to be made in the first section of the act hereby extended, shall be made and filed in the office of the secretary of state, within two years from the time when this act shall take effect, and if any person who, according to the provisions of the act hereby re-enacted and extended, is required to make and file in the office of the secretary of state the deposition or affirmation herein mentioned, shall neglect or omit to make and file the same within the time herein limited, he or she so neglecting or omitting to make and file such deposition or affirmation, shall not be entitled to the benefit of this act.

CHAPTER XXV.

Emigrants.

CHAP. 195.

AN ACT concerning passengers in vessels coming to the city of New York.

PASSED May 5, 1847; "three-fifths being present."

The People of the State of New York, represented in Senate and Assembly, do enact as follows :

[For Sec. 1 see Laws of 1851, ch. 523, Sec. 3.]

[For Sec. 2 see Laws of 1851, ch. 523, Sec. 7.]

[For Sec. 3 see Laws of 1851, ch. 523, Sec. 4.]

Commissioners of emigration.

Appointment and tenure of office.

§ 4. Gulian C. Verplanck, James Boorman, Jacob Harvey, Robert B. Minturn, William F. Havemeyer and David O. Colden, are hereby appointed commissioners, for the purpose of carrying into effect the intent and provisions of this act, of whom the said Gulian C. Verplanck and James Boorman shall constitute the first class, and shall hold their office two years; the said Jacob Harvey and Robert B. Minturn shall constitute the second class, and hold their office four years; and the said William F. Havemeyer and David O. Colden shall constitute the third class, and hold their office for six years; and upon the expiration of their several terms of office their places shall be filled by appointments, to be made by the Governor, by and with advice and consent of the Senate, and the persons so appointed shall respectively hold their offices for the term of six years. The mayor of the city of New York, the

mayor of the city of Brooklyn, the president of the German Society, and the president of the Irish Emigrant Society of New York, shall also severally, by virtue of their respective offices, be commissioners as aforesaid. The said Commissioners shall be known as the "Commissioners of Emigration," and by that title shall be capable of suing and being sued: The money so as aforesaid to be paid to the chamberlain of the city of New York, shall be paid out on the warrant of the said commissioners, or a majority of them: It shall be the duty of the said commissioners to provide for the maintenance and support of such of the persons for whom commutation money shall have been paid as aforesaid, or on whose account bonds shall have been taken as aforesaid, as would otherwise become a charge upon any city, town or county, of this state; and the said commissioners shall appropriate the moneys aforesaid, for that purpose, in such manner as to indemnify, so far as may be, the several cities, towns and counties of the state, for any expense or charge which may be incurred for the maintenance and support of the persons aforesaid; such appropriation shall be in proportion to the expenses incurred by said cities, towns and counties, severally, for such maintenance and support. And the more fully to effect the object contemplated by this act, the said commissioners are authorized to apply in their discretion any part of the said money, to aid in removing any of said persons from any part of this State to another part of this or any other State, or from this State, or in assisting them to procure employment, and thus prevent them from becoming a public charge: The said commissioners are also authorized in their discretion to apply any part of the said moneys to the purchase or lease of any property, or the erection of any building, which they may deem necessary for the purposes aforesaid. But any expense so incurred by the commissioners in any city, town or county, shall be charged to the share of such moneys which any such city, town or county, shall be entitled to receive thereof, for expense incurred in the support or maintenance of the persons for whom commutation money shall have been paid as aforesaid, or on whose account bonds shall have been taken as aforesaid.

Their powers and duties.

§ 5. In case any of the persons for whom commutation money has been paid as aforesaid, or for whom a bond has been given as aforesaid, shall, at any time within five years from the payment of such money or the execution of such bond, become chargeable upon any city, town or county within this State, it shall be the duty of the said Commissioners to provide for the payment of any expense incurred by any such city, town or county, for the maintenance and support of any such person, out of the commutation money to be paid as aforesaid, and the moneys collected on such bonds, so far as the same will enable them to do so. The said commissioners shall prescribe such rules and regulations as they shall

Provision in case of persons becoming chargeable for whom bonds were given.

PART I.

deem proper, for the purpose of ascertaining the right, and the amount of the claim of any city, town or county, to indemnity under the provisions of this and the preceding section. The said Commissioners shall have power to provide for the support and maintenance of any persons for whom commutation money shall have been paid, or on whose account a bond shall have been given as hereinbefore provided, and who shall become chargeable upon any city, town or county, in such manner as they shall deem proper; and after such provision shall have been made by such commissioners, such city, town or county shall not be entitled to claim any further indemnity for the support and maintenance of such person.

Agents to
be employ-
ed.

§ 6. The said commissioners are authorized to employ such agents, clerks and servants as they shall deem necessary for the purposes aforesaid, and to pay a reasonable compensation for their services out of the moneys aforesaid.

Chamber-
lain to re-
port annu-
ally.

§ 7. The chamberlain of the city of New York shall, on the first Monday of January, in every year, and at such other times as he shall be thereunto required by the said commissioners, report to them the amount of money received by him since his last previous report, for commutation money as aforesaid, and the amount of such moneys remaining in his hands.

Commis-
sioners to
report to
legislature.

§ 8. The said commissioners shall annually on or before the first day of February in each year, report to the legislature the amount of moneys received under the provisions of this act during the preceding year, and the manner in which the same has been appropriated particularly.

Vacancies
how to be
supplied.

§ 9. In case of a vacancy in the said board of commissioners, the same shall be filled by an appointment to be made by the governor, by and with the advice and consent of the senate. The person so appointed shall hold his office for the remainder of the term of the person in whose place he shall be appointed. The said commissioners shall in all cases be residents of the city of New York or city of Brooklyn.

Action may
be brought
on bond.

§ 10. If any person for whom a bond shall have been given as aforesaid, shall within five years from the date of such bond become chargeable upon any city, town or county of this state, or upon the moneys under the control of the said commissioners as aforesaid, the said commissioners may bring an action on such bond in the name of the people of this state, and shall be entitled to recover on such bond from time to time, so much money, not in the whole exceeding the penalty of such bond exclusive of costs, as shall be sufficient to defray the expenses incurred by any such city, town or county, or the said commissioners, for the maintenance and support of the person for whom such bond was given as aforesaid.

Penalty for
neglect or
refusal to
pay commu-
tation.

§ 11. If any master or commander as aforesaid shall neglect or refuse to pay over to the said chamberlain such sum of money as is herein before required for commutation money

for each and every such person, within three days after the arrival of such vessel at the port of New York, or shall neglect or refuse to give any bond so required as aforesaid within the said three days, every such master or commander and the owner or owners of such ship or vessel, severally and respectively, shall be subject to a penalty of three hundred dollars for each and every person or passenger on whose account such commutation money or such bond may have been required, to be sued for in the manner hereinafter provided.

§ 12. The penalties and forfeitures prescribed by this act may be sued for and recovered with costs of suit by and in the name of said commissioners of emigration, in any court having cognizance thereof, and when recovered, shall be applied to the purposes specified in this act. It shall be lawful for the said commissioners before or after suit brought, to compound for any of the said penalties or forfeitures, upon such terms as they shall think proper.

How recovered.

[For Section 13 see Laws of 1850, ch. 339, § 1.]

§ 14. The moneys now authorized by law to be collected by the health commissioner from the passengers in vessels arriving at the port of New York for the use of the Marine Hospital, except such as are paid under protest, shall be paid at such times as the said commissioners shall direct, to the chamberlain of the city of New York, and shall be drawn in the manner prescribed in the fourth section of this act, and the expenditures of the same for the purposes of the Marine Hospital, as now authorized by law, shall be made by the commissioners constituted by this act, or by the commissioners of health under their supervision and direction. And any surplus which shall remain beyond such expenditures and the appropriations made by existing laws shall be applied by the said commissioners to the general purposes of this act.

Money collected for marine hospitals to be paid to commissioners.

§ 15. Any appropriation made by existing laws from said moneys shall hereafter be paid out of the same by the commissioners appointed by this act, and any moneys which have been or shall hereafter be paid under protest, shall, upon the settlement or judicial determination in favor of the state of the claims thereto, be paid to the chamberlain of the city of New York to the credit of the commissioners of emigration, and shall be applied by them according to the provisions of this act.

Appropriations by existing laws.

§ 16. The said commissioners are authorized to erect such buildings and make such improvements upon the land belonging to the state, known as the "Marine Hospital," as they shall deem necessary for the purposes of this act and of the said hospital, out of the moneys in the treasury of the state belonging to the "Mariners' Fund," which have not been paid under protest, or which have not been otherwise appropriated.

Buildings may be erected, &c.

§ 17. If the commutation money collected under the provisions of the second section of this act, and the surplus of the revenues of the "Mariners' Fund," applicable to the pur-

Provision in case of deficiencies.

PART I.

poses of this act, as provided by the fourteenth section thereof, shall, at any time, be found insufficient to defray the expenses incurred by the said commissioners, under the provisions of this act, and also to enable them to reimburse as hereinbefore provided, to the several cities, towns and counties of the state, such sums as shall have been expended by them for the maintenance and support of persons for whom commutation money shall have been paid, or bonds given as aforesaid, such deficiency shall be paid out of the surplus of the moneys in the treasury of the state, belonging to the "Mariners' Fund," which have not been paid under protest, remaining after the expenditures for buildings and improvements authorized by this act. Nothing in this section contained shall be applicable to the moneys paid to the credit of said "Mariners' Fund," by the trustees of the "Seaman's Fund and Retreat," in the city of New York.

Repeal.

§ 18. The act passed February 11, 1824, entitled "An act concerning passengers in vessels coming to the port of New York;" and the act passed April 12, 1842, entitled "An act for the relief of the county of Kings from the support of foreign poor," are hereby repealed.

CHAP. 483.

AN ACT to amend an act entitled "An act concerning passengers in vessels coming to the city of New York," passed May 5, 1847.

PASSED December 15, 1847; "three-fifths being present."

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

[For Section 1 see Laws of 1849, ch. 350, § 6.]

Statement
of mariners
fund to be
rendered to
said com-
missioners.

§ 2. The comptroller of the state shall, within ten days after the passage of this act, render to the commissioners of emigration a full and particular statement of the condition of the Mariners' Fund, and the said commissioners shall have full power and authority to sue for and collect all claims in favor of said fund, and the moneys so collected shall be deposited with the Chamberlain of the city of New York, and shall be drawn from him in the manner provided by the fourteenth section of the act hereby amended.

[For Section 3 see Laws of 1851, ch. 523, § 2.]

To make
the neces-
sary regula-
tions for the
institution.

§ 4. The commissioners of emigration are authorized to make such regulations as they may deem necessary for the government of any institution, in which they may support such persons as become chargeable to them, and for the employment of the inmates thereof.

As amended by Laws of 1849, ch. 350, § 9.

[For Section 5 see Laws of 1850, ch. 339, § 3.]

§ 6. The second section of this act in relation to the collection of moneys by the commissioners of emigration shall not apply to the sum of sixteen thousand one hundred and sixty-six dollars and thirteen cents paid to the commissioners of health by the trustees of the Seamen's Fund and Retreat, and now in the hands of the commissioners of health, but the said sum shall be paid into the treasury by the commissioners of health, and when so paid ten thousand dollars thereof shall be applied as provided by the second section of the act, chapter 373, of the Laws of 1847, and the residue thereof in such manner as may be hereafter provided by law.

CH. XXV.
Provision
respecting
\$16,166.18
paid to
commis-
sioners.

§ 7. Nothing in this act contained shall be deemed to affect the present mode of appointment of the health officer, resident physician or commissioner of health in the city of New York; nor to prevent the health officer from selecting his own medical assistants.

Saving
clause.

CHAP. 431.

AN ACT concerning passengers arriving at the ports of entry and landings in this state.

PASSED December 10, 1847.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. Within twenty-four hours after the arrival of any ship or vessel at any port of entry or landing place in this state, situated northerly of the city of Albany, and including those upon the river St. Lawrence, Lake Ontario, the Niagara river and Lake Erie, from any of the United States, other than this state, or from any country out of the United States, the master or commander of any such ship or vessel shall make a report in writing, on oath or affirmation, to the president of the board of trustees of the village in which such port may be, or in case of his absence or other inability to serve, to either of the trustees of said village, or if such port be within the jurisdiction of an incorporated city, then such report shall be made to the mayor of such city, or in case of his absence to one of the aldermen thereof, or if such port or landing be without the jurisdiction of any incorporated city or village, then such report shall be made to one of the overseers of the poor of the town in which such port or landing may be, which report shall state the name, place of birth, last legal residence, age and occupation of every person or passenger emigrating to the said state, arriving in such ship or vessel on her last voyage to said port, not being a citizen of the United States, emigrating to the United States, and who shall not have paid the commutation money mentioned in the next section of this act. In case any such master or commander shall omit or neglect to report as aforesaid, any such person or passenger,

Master or
commander
to make re-
port in 24
hours.

Penalty for
neglect or
false report.

PART I.

with the particulars aforesaid, or shall make any false report or statement in respect to any such person or passenger, in all or any of the particulars hereinbefore specified, such master or commander shall forfeit the sum of seventy-five dollars for every such person or passenger in regard to whom any such omission or neglect shall have occurred, or any such false report or statement shall be made, for which the owner or owners of every such ship or vessel shall also be liable jointly and severally, and which may be sued for and recovered as hereinafter provided.

Money to
be paid to
treasurer.

§ 2. It shall be the duty of the officer to whom such report shall be made, by an endorsement to be made on the said report, to require the master or commander of such ship or vessel to pay to the treasurer of the said village or city, or to the overseer of poor as the case may be, the sum of one dollar for every person or passenger reported by such master or commander as aforesaid, which sum shall be paid as aforesaid, within twenty-four hours after the arrival of such ship or vessel at the said port or landing.

Treasurer
to give
bond.

§ 3. The treasurer of each of such cities and villages shall within five days after his election to office, and before he shall perform any duties under this act, execute a bond, with two sureties, to the superintendents of the poor of the county in which such village or city is situated, to be approved by the president of the board of trustees of such village, or by the mayor of such city, conditioned for the faithful performance of his duties under this act, and shall on or before the first Tuesday of the months of February, May, August and November in every year, report to and pay over to the superintendents of the poor of the county in which such city or village is situated, the amount of money received by him since his last previous report, for commutation as aforesaid.

Accounts
how to be
audited.

§ 4. The superintendents of the poor of said counties respectively, shall audit the accounts of the officers of such cities, or villages, or towns for services rendered by them under the provisions of this act, and pay the same out of the commutation money received by them aforesaid, and shall annually on or before the fifteenth day of February of each year, report to the legislature the amount of money received under the provisions of this act, during the preceding year, and the manner in which the same has been appropriated particularly.

Certain per-
sons to be
supported.

§ 5. It shall be the duty of the said superintendents to provide for the maintenance and support of such of the persons for whom commutation money shall have been paid as aforesaid, and shall appropriate the moneys aforesaid for that purpose, in such manner as to indemnify, as far as may be, the several cities, towns and counties of this state for any expense or charge which may be incurred for the maintenance and support of the persons aforesaid; such appropriation shall be in proportion to the expenses incurred by said cities,

towns and counties severally, for such maintenance and support.

§ 6. In case any such persons for whom commutation money has been paid as aforesaid, shall at any time within three years from the payment of such money, become chargeable upon any city, town or county within this state, it shall be the duty of the said superintendents to provide for the payment of any expenses incurred by any such city, town or county, for the maintenance and support of any such person out of the commutation to be paid as aforesaid, so far as the same will enable them to do so. The said superintendents shall prescribe such rules and regulations as they shall deem proper for the purpose of ascertaining the right and the amount of the claim of any city, town or county, to indemnity under this and the preceding section of this act.

Provision
in case of
becoming
chargeable
within
three years.

§ 7. If any master or commander as aforesaid shall neglect or refuse to pay over to the said treasurer, such sum of money as is hereinbefore required for commutation money, for each and every such person, within twenty-four hours after the arrival of such vessel at such port or landing, every such commander, and the owner or owners of such ship or vessel severally and respectively, shall be subject to a penalty of seventy-five dollars for each and every person or passenger on whose account such commutation money may have been required, to be sued for in the manner hereinafter provided.

Penalty for
neglecting
to pay by
master or
owner of
vessel.

§ 8. The penalties and forfeitures prescribed by this act, may be sued for and recovered with costs of suit, by either of the overseers of the poor of the city or town where such money ought to be paid, in the name of the superintendents of the poor of the said county, in any court having cognizance thereof; and when recovered, shall be applied to the purpose specified in this act.

Penalties
may be sued
for and re-
covered.

§ 9. Any ship or vessel whose master or commander, owner or owners, shall have incurred any penalty or forfeiture under the provisions of this act, shall be liable for such penalties or forfeitures, which shall be a lien upon such ship or vessel, and may be enforced and collected by warrant of attachment in the same manner as is provided in title eight of chapter eight, of the third part of the Revised Statutes, all the provisions of which title shall apply to the forfeitures and penalties imposed by this act; and the said superintendents shall, for the purposes of such attachment be deemed creditors of such ship or vessel, and of her master or commander, and owner or owners respectively.

The ship or
vessel to be
liable for
penalties.

CHAP. 219.

AN ACT for the protection of emigrants arriving in the State of New York.

PASSED April 11, 1848; "three-fifths being present."

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Docks or
piers may
be leased or
purchased
for the use
of emi-
grants.

Licenses to
land emi-
grants.

§ 1. The commissioners of emigration are hereby authorized and empowered to lease or purchase suitable docks or piers in the city of New York, and to erect necessary enclosures thereon, and such docks and piers to be appropriated and set apart for the exclusive use of landing emigrants, alien passengers; but no docks or piers shall be purchased or leased without the approval and consent of the common council of said city, and the expense thereof, not to exceed fifteen thousand dollars, shall be paid out of the moneys paid in pursuance of the provisions of an act entitled "An act concerning passengers in vessels coming to the city of New York, passed May 5, 1847, and be considered and charged as applied to the general purposes of the said act;" on application being made to them by any steamboat or lighter proprietor who is a citizen of good moral character, and shall give good security in a sum not exceeding five hundred dollars to comply with the provisions of this act, the said commissioners are hereby authorized and directed to grant licenses to receive alien passengers and their baggage from vessels arriving at the port of New York, subject to quarantine, or from the passengers' docks at quarantine, to be landed at the emigrant piers or docks aforesaid; and the said commissioners shall have power to revoke the license of any person violating the provisions of this act. And every captain of a steamboat or lighter not properly licensed for such purpose pursuant to this section, who shall convey any emigrant passenger from any such vessels, shall be liable to a penalty of one hundred dollars for each and every offense, to be recovered by the said commissioners of emigration.

Passengers
to be landed
on the emi-
grant piers.

§ 2. It shall be the duty of every ship-master, owner or consignee bringing to the port of New York any alien emigrants, steerage or second cabin passengers, in vessels not subject to quarantine, to cause the same with their baggage to be landed on the emigrant piers aforesaid, either directly from the vessel or by means of some steamboats or lighters licensed as aforesaid; and the landing of them upon any other pier or wharf, shall be punished by a fine not less than one hundred dollars, which fine may be recovered of the master, owner or consignee of such ship or vessel. The commissioners of emigration are hereby empowered to make all necessary regulations for the preservation of order, and the admission to or

exclusion from said dock of any person or persons excepting such as are duly licensed, and any person violating any of such regulations shall be liable to a penalty of one hundred dollars for each and every offense, to be recovered by the said commissioners of emigration.

[For Section 3 see Laws of 1849, ch. 432, § 1.]

[For Section 4 see Laws of 1849, ch. 321.]

[For Section 5 see Laws of 1857, ch. 579, § 4.]

§ 6. The commissioners of emigration may, when in their opinion it shall seem necessary, appoint a proper person or persons, to board vessels from foreign ports at the quarantine ground or elsewhere in the port of New York, having on board emigrant passengers, for the purpose of advising such emigrants, and putting them on their guard against fraud and imposition; and the health officer is hereby required to prevent any person or persons from going on board such vessels, which may be subject to examination by him, until after the said person or persons appointed by the commissioners of emigration, shall have had sufficient opportunity to perform their duty.

Persons may be appointed to board vessels and advise emigrants.

[For Section 7 see Laws of 1849, ch. 432, § 1.]

§ 8. No person holding office under the government of the United States, or of this state, or of any of its cities, or who shall be in the employment of the commissioners of emigration, shall solicit custom for any transportation line, or shall be interested in any way, directly or indirectly, in the forwarding of emigrants, under a penalty of not less than one hundred dollars, and not exceeding three hundred dollars, to be sued for in the name of the people of this state, and which money when collected, shall be paid into the county treasury, for the use of the poor of said county.

Restriction as to soliciting custom for transportation lines.

§ 9. The penalties and forfeitures prescribed by this act, except as is hereinbefore otherwise provided, shall be sued for and collected in the name of the people of this state, and applied in the same manner specified in the foregoing section, except so far as this act applies to the city of New York, where the same may be sued for and recovered with costs of suit, before any court having cognizance thereof, by and in the name of the commissioners of emigration; and when so recovered shall constitute a part of the fund and be disposed of in the same manner as commutation moneys now derived from emigrant passengers.

Penalties how to be sued for and collected.

§ 10. The commissioners of emigration shall annually make and return to the legislature with their annual report, an affidavit, in and by which they shall respectively swear or affirm, each for himself, to the correctness of such report, and that he hath not, directly or indirectly, been interested in the business of boarding emigrants, in the transportation of any emigrant passengers through any portion of the interior of this country, or had made or received directly or indirectly any gain, profit or advantage, by or through the purchase of supplies, the granting of any contract or contracts herein, or

Commissioners to make an annual report with an affidavit.

PART I.

Provision
in case of
deficiency
of funds.

licenses, privilege or privileges, or the employment of any officer, servant or agent, mechanic, laborer or other person in the business, under the control of said commissioners.

§ 11. In case the moneys now appropriated by law for the support of the fever and small pox hospitals at quarantine shall be exhausted during the recess of the Legislature, the commissioners of emigration may use such portions of the commutation money, collected pursuant to act of May 5th, 1847, for the support of said hospitals, as the Governor, Attorney-General and Comptroller may certify to be necessary for such purpose.

CHAP. 321.

AN ACT to amend an act entitled "An act for the protection of emigrants arriving in the state of New York," passed April 11, 1848.

PASSED April 10, 1849.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. The fourth section of the act entitled "An act for the protection of emigrants arriving in the state of New York," is amended so as to read as follows:

Restriction
as to lien on
effects of
emigrant
boarders.

§ 4. No keeper of any emigrant boarding house shall have any lien upon the baggage or effects of any emigrant for boarding, lodging, storage, or any other account whatever, for any greater sum than shall be due from such emigrant for boarding and lodging according to the rates or prices so posted as above provided; and upon complaint being made upon oath before the mayor or any police magistrate of the city in which such boarding house is located, that the luggage or effects of any emigrant are detained by the keeper of any emigrant boarding house, under pretence of any lien upon such luggage or effects, or on any claim or demand against the owner or owners thereof, for any other or greater sum than in accordance with such rates, it shall be the duty of the officer before whom such complaint is made, immediately to issue his warrant, directed to any constable or policeman of said city, commanding him or them to bring before him the party against whom such complaint has been made, and upon conviction thereof, the officer before whom such conviction shall be had, shall cause said goods to be forthwith restored to the owner thereof, and the party so convicted, shall be punished by a fine not less than fifty dollars, and not exceeding one hundred dollars, and shall be committed to the city prison until the said fine shall be paid, and until such luggage or effects shall be delivered to such emigrants. Any person so convicted shall have the right of appealing from the decision of such mayor or magistrate to the same tri-

Right of
appeal.

bunals and in the same manner as is provided by law for appeals from the decisions of justices in civil cases, and all the provisions of law relating to appeals from justices, shall apply so far as applicable to appeals from such mayor or other magistrate. But such appeal shall not authorize the detention of such luggage or effects after the payment of the sum which such mayor or magistrate shall adjudge to be justly due from such emigrant.

[For Section 2 see Laws of 1857, chap. 579, § 4.]

CHAP. 350.

AN ACT to amend certain acts concerning passengers coming to the city of New York,

PASSED April 11, 1849; "three-fifths being present."

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

[For Section 1 see Laws of 1851, chap. 523, § 3.]

[For Section 2 see Laws of 1851, ch. 523, § 7.]

[For Section 3 see Laws of 1851, ch. 523, § 4.]

§ 4. If any person for whom a bond shall have been given as aforesaid shall within the time specified in such bond become chargeable on any city, town or county of this state, or upon the moneys under the control of the said commissioners as aforesaid the said commissioners may bring an action on such bond in the name of the people of this state, and shall be entitled to recover on such bond from time to time so much money, not in the whole exceeding the penalty of such bond exclusive of costs, as shall be sufficient to defray the expenses incurred by any such city, town or county or the said commissioners for the maintenance and support of the person for whom such bond was given as aforesaid, and shall be authorized to collect and apply such money from any of the real or other security mortgaged, pledged or deposited therefor in conformity to this act.

Provision
in case a
person be-
comes
chargeable
to a city or
town.

[For Section 5 see Laws of 1850, ch. 339, § 2.]

[For Section 6 see Laws of 1849, ch. 350, § 6.]

[For Section 7 see Laws of 1851, ch. 523, § 2.]

[For Section 8 see Laws of 1851, ch. 523, § 5.]

§ 9. The fourth section of said last mentioned act is amended by striking out the words "of the" before the word "institution," and inserting in lieu thereof the word "any."

Amend-
ment.

[For Section 10 see Laws of 1850, ch. 339, § 3.]

§ 11. The board of health of the city of New York may appoint any physician in their employ, or in that of the commissioners of emigration, to act as the agent of the board of health in all matters concerning the protection of the city against the introduction of contagious or infectious diseases.

Board of
health may
appoint an
agent.

§ 12. It shall be the duty of the superintendent of the marine or other hospital, used for quarantine purposes, to furnish

Superinten-
dent to re-
port to

PART I.
board of
health.

to the board of health as often as may be required a full and correct report of all persons in the said hospital affected with any contagious or infectious disease, and all of such patients as may die or be discharged as cured; such report shall be countersigned by the agent of the board of health, and no persons who may be, or who have been received as patients affected with contagious or infectious diseases, or under treatment as such shall be discharged or removed from the marine or other hospital used for quarantine purposes without a permit in writing from the health officer.

What alien
passengers
are to be
received
into hospi-
tal.

§ 13. The commissioners of emigration shall receive into the marine or other hospital for quarantine purposes, all alien passengers for whom bonds shall have been given or commutation paid, under the several acts of this state relating to alien passengers arriving at the port of New York, who shall be affected with any contagious or infectious disease, and sent to such hospital by the authority of the health officer. They shall defray the expenses of such patients out of the moneys by them received on account of bonds or commutation. They shall also receive and provide for all other patients or passengers who shall have landed from any vessel at the port of New York, affected with any contagious or infectious disorder, who shall be directed to be so received by the health officer or the board of health; they shall be entitled to receive for each person so admitted (other than aliens as above mentioned) at the rate of three dollars per week for their support and medical care, which shall be at the expense of the owner or consignee of any vessel in which such person shall have arrived, and from which they shall have landed, and no vessel shall be permitted to leave quarantine until such expense shall have been paid, or secured to be paid to the satisfaction of the commissioners of emigration or the officer duly authorized by them for such purpose.

Restriction.

§ 14. The health officer shall not by right of office have any other authority over the marine hospital, or medical charge as physician thereof, than as in this act provided.

Repeal of
part of act
of 1846.

§ 15. So much of the act concerning quarantine or regulations in the nature of quarantine at the port of New York, passed May 18th, 1846, as requires that any person shall be admitted into the marine hospital who shall have paid hospital money during any temporary sickness within one year after such payment, is hereby repealed.

Repeal of a
part of the
Rev. Stat.,
&c.

§ 16. So much of the Revised Statutes in relation to the marine hospital and its funds, and the several acts and amendments thereto, passed April 18, 1843, and May 7, 1843, as authorizes or requires the health commissioner to demand or receive hospital money from or on account of any master, mate, sailor or passenger arriving in the port of New York, is hereby repealed.

Powers of

[For Section 17 see Laws of 1851, ch. 523, § 6.]

§ 18. The physicians of marine hospital shall have the

superintendence and control of, and shall make such regulations for the sanitary treatment of the patients in such marine or other hospital for quarantine purposes as may be found necessary, and prescribe therein the duties of the assistant physicians thereof, and shall take upon himself and assign to such assistants respectively the charge of such portions of such hospital as shall seem to him best adapted to secure the objects and purposes of such institution, and the care and proper medical treatment of the inmates thereof; and the said commissioners may employ from time to time such additional medical assistants as the temporary wants of such hospital and the inmates thereof shall require.

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the physi-
cian.

§ 19. Each assistant physician of such marine or other hospital for quarantine purposes, shall from time to time, as shall be necessary, select and appoint such and so many nurses and orderlies in the department of such hospital which shall have been assigned to or be under his supervision and care, as shall be required for the proper care of the inmates of their respective departments, but the number of such nurses and orderlies shall be determined and controlled by the "physician of marine hospital," and the compensation of such nurses and orderlies and of each of them, shall be fixed and determined by the commissioners of emigration.

Assistants
to appoint
nurses and
orderlies.

§ 20. The "physician of marine hospital," shall have and receive an annual salary of five thousand dollars, to be paid quarterly; and each of the assistant physicians shall have and receive a salary of one thousand two hundred dollars per annum, to be paid quarterly or monthly, as the commissioners of emigration may determine; and in that ratio for any period of service of such physician or assistant, and all salaries and other compensation of such physician and assistant physicians, and of all nurses, orderlies and servants, or others necessarily employed in and about the business, care and proper management of such marine or other hospital for quarantine purposes, shall be paid by the commissioners of emigration, from and out of moneys collected upon the bonds hereinbefore required to be given by the owners or consignees of vessels arriving with and landing passengers at the port of New York, or from the commutation moneys paid upon or in lieu of such bonds, in accordance with the provisions of this act, and all the expenses of such marine or other hospital for quarantine purposes, shall, far as practicable, be defrayed by said commissioners out of and from the moneys and securities in this act specified; but nothing in this act contained shall be so construed as to authorize the payment of any salary or compensation for services rendered by said commissioners of emigration or any of them.

Salaries of
physicians
and assist-
ants.

§ 21. The penalties and forfeitures prescribed in and by this act may be sued for and recovered with costs of suit, by and in the name of the said commissioners of emigration in any court having cognizance thereof, and when recovered

Penalties
and forfei-
tures how
sued for
and recov-
ered.

PART I.

shall be applied to the support of such marine or other hospital for quarantine purposes as specified in this act. It shall be lawful for the said commissioners, before or after suit brought to compound or commute for any of the said penalties or forfeitures upon such terms as they shall think proper, also to commute and compound with the owner or consignee of any ship or vessel for any such bond or bonds as are required in section three of this act to be given by such owner or consignee for such person or persons, passenger or passengers as have been paupers in any other country or whom from sickness or disease existing at the time of departure from the foreign port, are or are likely soon to become a public charge, or who shall be sent to the marine or other hospital for quarantine purposes in accordance with the provisions of this act, in consequence of sickness or disease existing at the time of departure from the foreign port, the commutation for said last mentioned bond or bonds to be fixed by said commissioners at such sum as they shall deem just and equitable and sufficient to defray the necessary expenses consequent upon the care, support and maintenance of the persons for whom such commutation shall be paid, during the existence and continuance of their then sick or diseased state.

CHAP. 432

AN ACT to amend "An act for the protection of emigrants arriving in the State of New York."

[The act here referred to is chap. 219 of Laws of 1848.]

PASSED April 11, 1849; "three-fifths being present."

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. The third and seventh sections of the act entitled "An act for the protection of emigrants arriving in the state of New York," is hereby amended so as to read as follows:

Persons
keeping
boarding
houses to
take out
license.

§ 3. All persons keeping houses in any of the cities of this state for the purpose of boarding emigrant passengers, shall be required to have a license for said purpose from the mayor of the city in which such houses are located, and such person so licensed shall pay to the said city the sum of ten dollars per annum, and shall give bonds satisfactory to said mayor, with one or more sureties, in the penal sum of five hundred dollars, for their good behavior, and the proper conduct of all agents and runners in their employ, and said mayor is hereby authorised to revoke such license for cause. Every keeper of such boarding house shall, under a penalty of fifty dollars, cause to be kept conspicuously posted in the public rooms of such house, in the English, German, Dutch, French and Welch languages, and printed upon business cards, to be

Notice in
various lan-
guages to
be put up
in each
house.

kept for distribution as hereinafter provided, a list of the rates of prices which will be charged emigrants per day and week for board and lodging, and also the rates for separate meals, which card shall contain the name of the keeper of such house, together with its number and the name of the street in which such house is situated. The keeper of such house shall also file a copy of said list in the city of New York in the office of the commissioners of emigration, and in each of the other cities of this state, with the mayor of said city, and with the agent of the commissioners of emigration, and the keeper of any emigrant boarding house who shall neglect or refuse to post a list of rates, or to keep business cards so as above provided, or who shall charge or receive, or permit or suffer to be charged or received for the use of such keeper or for any other person, any greater sum than according to the rates of prices so posted and printed on business cards, and if any runner employed by any emigrant boarding house keeper or any emigrant boarding house keeper himself, shall engage any emigrants as guests for such boarding house, without delivering to every such emigrant a printed business card as above provided, he shall, upon conviction thereof, be deprived of his or her license, and be punished by a fine not less than fifty, nor more than one hundred dollars, to be recovered in the city of New York by the commissioners of emigration, and in the other cities of this state by the mayors thereof, and any person who shall keep a boarding or lodging house for emigrants within any of the cities of this state, who shall refuse or neglect to obtain a license in pursuance of the provisions of this section, shall, upon the first conviction, forfeit the penalty of one hundred dollars, and upon a subsequent conviction, shall forfeit the penalty of two hundred dollars, to be recovered by the persons, and in the manner above set forth.

Copy thereof to be filed with commissioners of emigration.

§ 7. No person or persons shall exercise the vocation of booking emigrant passengers, or taking money for their inland fare, or for the transportation of the luggage of such passengers, without keeping a public office for the transaction of such business, nor without the license of the mayor of the city in which such office shall be located, for which shall be paid the sum of twenty-five dollars per annum. Every such office and place for weighing luggage, shall be at all times when business is being transacted therein, open to the commissioners of emigration or their agent, duly appointed, and no scales or weights shall be used for such purpose but such as have been inspected and sealed by the city inspector of weights; and every such establishment shall have posted in a conspicuous place and manner at its place of business, in the English, German, Dutch, French and Welch languages, a list of prices or rates of fare for the passage of emigrant passengers, and the price per hundred pounds for transportation of their luggage to the principal places to which the proprietors

Agents or persons booking emigrant passengers to keep an office and have license.

Establishments to have notices posted, &c.

**PART I.
Tickets to
be issued.**

thereof undertake to convey such passengers; and shall also deliver a copy of such list to the commissioners of emigration, or to their agent in any city where such agency shall be established; and any person or company who shall charge or receive, or allow to be charged or received, by any person in his or their employment, a greater amount than is specified in said list of prices, or who shall defraud any emigrant in the weight of his or her luggage, or who shall receive money from an emigrant or emigrants for their passage or for the transportation of their luggage, and shall refuse or neglect to issue to the person or persons so paying their fare, or for the transportation of their luggage, a ticket which shall state the time and place of such issue, the number of persons so paying, the distance in miles to the place to which fare is received, the amount so received, the number of pounds of baggage, and the price per hundred pounds for its transportation; which said ticket shall be signed by the person or persons in whose names the establishment is conducted, and if more than one person is interested in the concern as a partner, then the full name of all the persons so interested in said concern shall be printed or written on the ticket; or who shall issue any such ticket directed to an agent without first having made arrangements with some responsible person or persons to act as his, her or their agent, or who shall issue a ticket so as aforesaid for the passage of any emigrant, or his or her luggage, which shall not be promptly redeemed by the agent or consignee, according to the terms of the agreement, as set forth in the ticket, or who shall in any way fail or neglect to fulfill any contract for the passage of any emigrant, or for the transportation of any luggage, made with an emigrant, or who shall issue to any person blank receipts signed by him or them, or who shall permit his, her or their name or names to be used by any other person or persons in said business of booking emigrant passengers and their luggage, or taking money for their fare or transportation of their luggage, shall, together with all other persons concerned in the violation of these provisions, be deemed guilty of a misdemeanor, and shall upon conviction be punished by confinement in the city or county prison, not less than six nor more than twelve months; and any person or company receiving money as aforesaid for the passage of emigrants, or for the transportation of their luggage, without such office and license, or who shall refuse admission as aforesaid to such office or place of weighing luggage during the time of transacting business therein, or who shall neglect to post the said list of rates as aforesaid or who shall neglect or refuse to furnish a copy thereof as aforesaid, or who shall make any arrangement or engagement with any emigrant for his passage or transportation, or any runner or agent connected with or employed by such forwarding establishment make such engagement or arrangement without delivering to every such emigrant a printed card (in the lan-

**Punish-
ment.**

guage of the country to which said emigrant may belong) of prices or rates of fare, which will be charged every emigrant for his passage or for transportation of his baggage or effects to the principal places on the route which he, the said emigrant, is about to travel, or every such keeper or owner or owners, or runner or runners connected therewith, or any licensed emigrant runner or runners shall be deemed guilty of a misdemeanor, and shall upon conviction be punished by imprisonment in the county prison for a period not less than three nor more than six months. Licenses under this section may be revoked for cause; and no person shall be licensed under this section who is not of good moral character and a citizen of the United States.

§ 2. The commissioners of emigration are hereby authorized to employ such agents, clerks and servants as they shall deem necessary for the purpose aforesaid: and they shall appoint at least one agent in each of the cities of Albany, Rochester, and Buffalo, and pay a reasonable compensation to such agents, clerks, and servants, for their services, out of the moneys aforesaid.

Commissioners
may employ
agents
&c.

CHAP. 339.

AN ACT to amend the act entitled "An act concerning passengers in vessels coming to the city of New York," passed May 5, 1847; also to amend the act entitled "An act to amend certain acts concerning passengers coming to the city of New York," passed April 11, 1849.

PASSED April 10, 1850.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. The thirteenth section of the act entitled "An act concerning passengers in vessels coming to the city of New York," passed May 5, 1847, is hereby amended so as to read as follows:

Any ship or vessel, whose master or commander, owner or owners, shall have incurred any penalty or forfeiture under this act, or under the act of 11th April, 1849, amending the same, entitled "An act to amend certain acts concerning passengers coming to the city of New York," shall be liable for such penalties or forfeitures which may be a lien upon such ship or vessel, and may be enforced and collected by warrant of attachment in the same manner as is provided in title eight of chapter eight of the third part of the Revised Statutes, all the provisions of which title shall apply to the forfeitures and penalties imposed by this act; and the said commissioners of emigration shall, for the purposes of such attachment, be deemed creditors of such ship or vessel, and

Penalty or
forfeiture
how en-
forced.

PART I.

of her master or commander and owner or owners respectively.

§ 2. The fifth section of the act entitled "An act to amend certain acts concerning passengers coming to the city of New York," passed April 11, 1849, is hereby amended so as to read as follows:

Penalty for
refusing to
give bond

If any owner or consignee, as aforesaid, shall refuse or neglect to give any such bond or bonds as hereinbefore required, according to the second section of this act, for each person or passenger landing from his ship or vessel, within three days after the landing of such persons or passengers, or shall not within that time have paid the moneys authorized by said second section to be received in cases where such bonds are herein authorized to be commuted for, or shall refuse or neglect to give the bonds required by the third section of this act to be given in certain cases, on the requirement of the mayor of the city of New York, or other person discharging the duties of his office, made according to the provisions of said section, within six days after such requirement being so made, every such owner or consignee of such ship or vessel, severally and respectively, shall be subject to a penalty of five hundred dollars for each and every person or passenger on whose account such bond may have been required, or for whom such commutation money might have been paid under this act; such penalty to be sued for as provided for in the twelfth section of the said act hereby amended, in every case where any fine, penalty, or forfeiture shall be incurred by the owner or owners, consignee or consignees, master, or commander of any vessel arriving at the port of New York, under any of the provisions of the acts concerning passengers coming to the city of New York, passed 5th May, 1847, and of this act, by reason of their neglect or refusal to give the bonds, or any of them, required by law, the consignee of such passengers, in relation to whom such neglect or refusal shall have occurred, shall be liable in the same penalties, and may be sued and recovered against in the same manner as is by law provided in relation to the owner or owners, consignee or consignees of the vessel.

How col-
lected.

See Laws of 1853, ch. 224.

§ 3. The fifth section of the aforesaid act passed 5th May, 1847, and amended by the tenth section of the aforesaid act, passed April 11th, 1849, is hereby further amended so as to read as follows:

Property of
minors,
how dis-
posed of.

In all cases in which minor children of alien passengers shall become orphans by their parents, or last surviving parent dying on the passage to the port of New York, or in the Marine Hospital, or in any other establishment under the charge of the commissioners, the personal property which such parents or parent may have had with them shall be taken in charge by the commissioners of emigration, to be

by them appropriated for the sole benefit of said orphan children; and said commissioners shall give, in their annual report to the Legislature, a minute statement of all cases in which property shall come into their possession by virtue of this section, and the disposition made of the same, unless it shall appear that there are other children or persons entitled by will or otherwise, to such property, or a distributive share thereof. Whenever it shall so appear, the portion only to which the said minor orphans would be legally entitled shall be applied to their use, and the remainder shall be received, held and distributed to the parties severally entitled thereto, in the same manner, and with the same authority as by law provided in respect to public administrators.

[The act intended to be amended by this section is doubtless ch. 483, passed December 15, 1847, and not ch. 195, passed May 5, 1847. But see section 1 of ch. 523 of 1851, which professes to amend this section, and may obviate the difficulty.]

CHAP. 523.

AN ACT to amend chapter four hundred and eighty-three, of the laws of eighteen hundred and forty-seven, chapter three hundred and fifty, of the laws of eighteen hundred and forty-nine, chapter two hundred and seventy-five, of the laws of eighteen hundred and fifty, and chapter three hundred and thirty-nine, of the laws of eighteen hundred and fifty, acts concerning passengers coming to the city of New York, and the public health.

PASSED July 11, 1851.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. The third section of chapter three hundred and thirty-nine, of the laws of eighteen hundred and fifty, is hereby amended so as to read as follows: Whenever any alien emigrant, whose personal property shall not exceed the value of twenty-five dollars, shall die on the passage to the port of New York, or in the Marine Hospital, or in any other establishment under the charge of the commissioners, and in all cases in which minor children of alien passengers shall become orphans by their parents or last surviving parent dying, as aforesaid, the personal property which such alien emigrant, or such parent or parents may have had with them shall be taken in charge by the commissioners of emigration, to be by them appropriated for the sole benefit of the next of kin of such alien emigrant or of said orphan children; and said commissioners shall give, in their annual report to the legislature, a minute description of all cases in which property shall come into their possession by virtue of this section, and

Property of
emigrants.

How dis-
posed of, in
case of
death.

PART I.

the disposition made of the same, unless it shall appear that there are other persons entitled by will or otherwise to such property or distributive share thereof. Whenever it shall so appear, the portion only to which the next of kin or said minor orphans would be legally entitled shall be transferred to them or applied to their use, and the remainder shall be received, held and distributed to the parties severally entitled thereto, in the same manner and with the same authority as by law provided in respect to the public administrator of the city of New York, except that the said commissioners are hereby authorized to distribute the same after a notice for creditors to appear and put in their claims within one week from the publication of the said notice. The said notice shall be published once in one of the daily papers of the city of New York.

Poor children.

§ 2. The third section of chapter four hundred and eighty-three, of the laws of eighteen hundred and forty-seven, is hereby amended so as to read as follows: The commissioners of emigration, or any one or more of them, shall have and exercise the same powers and authority in relation to poor children, actually chargeable upon or receiving support from said commissioners, as are now by law conferred upon the governors of the Alms-House, by section seven, of chapter three hundred and twenty-four, of laws of eighteen hundred and fifty.

Master of vessel to report age, &c., of passengers.

§ 3. The first section of an act entitled "An act concerning passengers in vessels coming to the city of New York," passed May fifth, eighteen hundred and forty-seven, as the same was amended by the first section of an act entitled "An act to amend certain acts concerning passengers coming to the city of New York, passed April eleventh, one thousand eight hundred and forty-nine," is hereby further amended so as to read as follows: Within twenty-four hours after the landing of any passenger from any ship or vessel arriving at the port of New York, from any of the United States other than this state, or from any country out of the United States, the master or commander of the ship or vessel from which such passenger or passengers shall have been landed shall make a report in writing, on oath or affirmation, to the mayor of the city of New York, or in case of his absence, or other inability to serve, to the person discharging the duties of his office, which report shall state the name, place of birth, last legal residence, age and occupation of every person or passenger who shall have landed from such ship or vessel on her last voyage to said port, not being a citizen of the United States, and who shall have, within the last twelve months, arrived from any country out of the United States, at any place within the United States, and who shall not have paid the commutation money, or been bonded according to the provisions of this act, or of the act hereby amended, or of the act of February eleventh, eighteen hundred and twenty-

four, concerning passengers in vessels coming to the port of New York, nor paid commutation money under the provisions of this or any former act. The same report shall contain a like statement of all such persons or passengers aforesaid, as shall have been landed, or been suffered to land from any such ship or vessel at any place during such last voyage, or who shall have been put on board, or suffered to go on board of any other ship, vessel, or boat, with the intention of proceeding to and landing at the said city of New York, or elsewhere, within the limits of this state. The said report shall further specify whether any of the said passengers so reported are lunatic, idiot, deaf, dumb, blind, infirm, maimed, or above the age of sixty years, also designating all such passengers as shall be under the age of thirteen, or widows having families, or women without husbands having families, with the names and ages of their families, and shall further specify particularly the names, last place of residences, and ages of all passengers who may have died during the said last voyage of such vessel, also the names and residences of the owner or owners of such vessel. In case any such master or commander shall omit or neglect to report as aforesaid, any such person or passenger, with the particulars aforesaid, or shall make any false report, or statement in respect to any such person or passenger, or in respect to the owner or owners of any such vessel, or in respect to any of the particulars herein before specified, such master or commander shall forfeit the sum of seventy-five dollars for every such passenger, in regard to whom any such omission or neglect shall have occurred, or any such false report or statement shall be made, for which the owner or owners, consignee or consignees of every such ship or vessel shall also be liable, jointly and severally, and which may be sued for and recovered, as hereinafter provided.

Penalty for
omission or
false report

§ 4. Section third of the said act, concerning passengers coming to the city of New York, passed May fifth, eighteen hundred and forty-seven, as the same was amended by section three of the act to amend certain acts concerning passengers coming to the port of New York, passed April eleventh, eighteen hundred and forty-nine, is hereby further amended so as to read as follows: It shall be the duty of the commissioners of emigration, hereafter named, to examine into the condition of passengers arriving at the port of New York in any ship or vessel, and for that purpose all or any of the said commissioners, or such other person or persons as they shall appoint, shall be authorized to go on board and through any such ship or vessel; and if on such examination there shall be found among such passengers any lunatic, idiot, deaf, dumb, blind, maimed, or infirm persons, or persons above the age of sixty years, or widow with a child or children, or any woman without a husband, and with a child or children, or any person unable to take care of himself or

Condition
of passen-
gers to be
examined
into.

Paupers
how dis-
posed of.

PART I.**Bond re-
quired.****With sure-
ties.****Commis-
sioners to
appoint ser-
vants and
agents.****And pay ex-
penses.**

herself without becoming a public charge, or who, from any attending circumstances, are likely to become a public charge, or who, from sickness or disease, existing at the time of departure from the foreign port, are, or are likely soon to become a public charge, they shall report the same to the said mayor particularly, and thereupon, and unless a bond, as required in the second section of this act, shall have been given, the said mayor, or the person discharging the duties of his office, shall require in the endorsement to be made as aforesaid, or in any subsequent endorsement or endorsements thereon, and in addition to the commutation money, that the owner or consignee of such ship or vessel, with one or more sufficient sureties, shall execute a joint and several bond to the people of the state in a penalty of five hundred dollars, for every such passenger, conditioned to indemnify and save harmless the commissioners of emigration, and each and every city, town or county within the state from any further cost or charge, which said commissioners, or any such city, town or county shall incur for the maintenance or support of the person or persons named in such bond, or any of them, within five years from the date of such bond. The sureties to the said bonds shall be required to justify before and to the satisfaction of the officer making such endorsement, and by their oath or affirmation shall satisfy such officer that they are respectively residents of the State of New York, and worth double the amount of the penalty of such bond, over and above all debts, liabilities, and all property exempt from execution. The subsequent endorsement authorized in this section may be made at any time within thirty days after such examination, or of the landing of any such person or passenger.

§ 5. The eighth section of chapter three hundred and fifty, of the laws of eighteen hundred and forty-nine, is hereby amended so as to read as follows: The commissioners of emigration are authorized to employ and appoint and dismiss at pleasure a superintendent, physicians and such other officers, nurses and orderlies and such servants as they shall deem necessary for the management and care of the Marine and other hospitals used for quarantine purposes, and to pay all needful expenses therefor out of the moneys under their control; but the moneys received under any of the provisions of this act as commutation money, or upon bonds given for or on account of any persons or passengers landing from vessels at the port of New York or elsewhere, shall not be applied or appropriated to any other purpose or use than to defray the expenses incurred for the care, support, or maintenance of such persons or passengers, nor shall such passengers be entitled to any aid from the commissioners of emigration after they shall have left the State of New York, and been absent therefrom for more than one year. Nothing in this act contained shall be deemed to affect the authority of the

board of health, nor the mode of appointment of the health officer, resident physician, or commissioner of health of the city of New York, or to prevent the health officer from selecting his own medical assistants, other than those of the Marine Hospital, for any duties required by law to be discharged by him, or under his authority.

§ 6. Section seventeen of chapter three hundred and fifty, of the laws of eighteen hundred and forty-nine, is hereby amended so as to read as follows: The commissioners of emigration are authorized to require the health officer to perform the duties of physician to the Marine Hospital; in which case he shall reside within the quarantine enclosure, and perform the duties of physician of Marine Hospital, and all other duties appertaining to that office, and discharge the patients from the hospital without compensation therefor, other than is now by law allowed him as health officer, and he shall not be entitled to demand or receive from the commissioners of emigration any pay or compensation whatever for services performed by him except where a written contract to that effect shall have been entered into by them. He shall also perform the duties of superintendent without compensation, if so required by the commissioners of emigration, and at and after the expiration of the term of the present health officer, he shall pay the wages of the boatmen whom they shall respectively employ, and the commissioners of Emigration shall in no respect be liable therefor.

Health officer.

§ 7. Section second of chapter three hundred and fifty of the laws of eighteen hundred and forty-nine, is hereby amended so as to read as follows: It shall be the duty of the said mayor or other person discharging the duties of his office aforesaid, by an endorsement to be made on the said report, to require the owner or consignee of the ship or vessel from which such persons were landed, to give a several bond to the people of the State, in a penalty of three hundred dollars for each and every person or passenger included in such report, such bond being secured as hereinafter provided, and conditioned to indemnify and save harmless the commissioners of emigration and each and every city, town, or county in this State from any cost which said commissioners or such city, town or county shall incur for the relief or support of the person named in the bond, within five years from the date of such bond, and also to indemnify and refund to the said commissioners of emigration any expense or charge they may necessarily incur for the support or medical care of the persons named therein, if received into the Marine Hospital or any other institution under their charge. Each and every bond shall be secured by two or more sufficient securities, being residents of the State of New York, each of whom shall prove by oath or otherwise that he is owner of a freehold in the State of the value of three hundred dollars over and above all or any claim or lien thereon, or against him, includ-

Bond required of consignee of vessel.

PART I.

Commuta-
tion for
bond.Health off-
icer to re-
port.

ing therein any contingent claim which may accrue from or upon any former bond given under the provisions of this act; or such bond may, at the option of the party, be secured by mortgage of real estate, or by the pledge and transfer of public stock of the United States or of the State of New York, or of the city of New York, or by deposit of the amount of penalty in some bank or trust company; such security, real or personal, having been first approved by the said mayor. It shall be lawful for any owner or consignee at any time within twenty-four hours after the landing of such persons or passengers from any ship or vessel in the port of New York, except as in the section hereinafter provided, to commute for the bond or bonds so required, by paying to the health commissioners of the city of New York the sum of one dollar and fifty cents for each and every passenger reported by him as by law required; the receipt of such sum by said health commissioners shall be deemed a full and sufficient discharge from the requirements of giving bonds as above provided. The said health commissioner is hereby required to pay over daily the said money with an account thereof to the chamberlain of the city of New York. But no owner or consignee shall be authorized to commute for the bond so required for any passenger arriving in the port of New York, between the first day of December and the fifteenth day of April, who may be sent to the Marine Hospital from shipboard by the health officer, or by the authority of the board of health of the city of New York on account of illness from ship fever. The commissioners of emigration shall have authority to commute specially for any bond in such cases at such rates and in such manner as shall appear to them equitable and proper. It shall be the duty of the health officer to report without delay to the commissioners of emigration the names of all passengers sent by his order during the above mentioned period from ship board to the marine hospital on account of illness from ship fever. For the duties performed by the health commissioner and named in this section, he shall be paid by the commissioners of emigration at the rate of seventeen hundred and fifty dollars per annum, and he shall be paid the remainder of his salary by the mayor, aldermen and commonalty of the city of New York. And at and after the expiration of the term of the present health commissioner, it shall be lawful for the commissioners of emigration to select for the performance of the duties named in this section and now performed by the commissioner of health, either the mayor of the city of New York, or the chamberlain of said city, or the health commissioner, and the compensation for the performance of said duties shall be so much as such officer so selected and the commissioners of emigration may agree upon, and thereafter the salary of the health commissioner shall be fixed by the mayor, aldermen

and commonalty of the city of New York, and paid from the treasury of said city.

Sale or exchange of land.

§ 8. The commissioners of emigration are hereby authorized and empowered by and with the consent and approval of the governor, comptroller and attorney-general, to sell or exchange, and give conveyances for any lands or any portion thereof, which have been or may hereafter be purchased by them as such commissioners.

§ 9. All acts and parts of acts inconsistent with this act are hereby repealed.

CHAP. 218.

AN ACT for the protection of emigrant passengers arriving at the city of New York.

PASSED April 13, 1853.

The People of the State of New York, represented in Senate and Assembly, do enact as follows :

§ 1. The owner or owners, consignee or consignees, master, commander, or person having charge of any ship or vessel arriving at the port of New York with passengers emigrating to the United States, shall land all such passengers on some one of the public wharves of the city of New York, excepting, however, such wharves as are owned or rented by or are under the control of any steamboat or railroad or forwarding company or line.

Landing passengers.

§ 2. No owner or owners, consignee or consignees, master, commander or person having charge of any such ship or vessel, shall order any such passengers to be taken or removed from such ship or vessel, at quarantine or elsewhere, excepting for the purpose of quarantine regulations as to health, or shall give orders, or permit, or allow any runner or person on behalf of, or connected with, any steamboat, railroad, or forwarding company or line, or emigrant boarding house, to solicit or book any such passengers, or to enter or go on board such ship or vessel, prior to the landing of such passenger, as is provided for in the first section of this act.

Passengers not to be removed from vessel at quarantine.

Thus amended by Laws of 1853, ch. 619.

§ 3. The first and second sections of this act shall apply to the owner or owners, consignee or consignees, master, commander, or persons having charge of any steamboat or other vessel employed for the purpose of conveying any passengers from quarantine.

Explanatory of 1st and 2d sections.

§ 4. Any consignee or consignees, master, commander, or person having charge of any ship, steamboat or vessel, who shall violate any of the provisions of this act, and the owner or owners of such ship, steamboat or vessel, severally and respectively, shall be subject to a penalty of five hundred dol-

Penalty for violating provisions of act.

PART I.

lars for each and every violation of any of the provisions of this act, to be sued for and recovered with costs of suit by and in the name of the commissioners of emigration in any court having cognizance thereof; and when recovered, one-half of said recovery shall be paid to the person furnishing information and evidence of such violation, and the remainder of such recovery shall be applied and used by said commissioners of emigration for the purposes for which said commissioners are constituted.

Penalties
to be liens
on ship or
vessel.

§ 5. Any ship, steamboat or vessel, whose master, commander, owner or owners shall have incurred any penalty or forfeiture, under the provisions of this act, shall be liable for such penalties or forfeitures, which shall be a lien upon such ship or vessel, and may be enforced or collected by warrant or attachment, in the same manner as is provided in title eight of the third part of the Revised Statutes, all the provisions of which title shall apply to the forfeitures and penalties imposed by this act; and the said commissioners of emigration shall, for the purpose of such attachment, be deemed creditors of such ship, steamboat or vessel, and of her master or commander and owner or owners respectively.

Landing
from steam-
boats.

§ 6. Nothing in this act contained shall be construed to prevent the landing of such emigrant passengers from steamboats or other vessels, in the manner provided in the first section of this act, in any case where the ship or vessel from which such passengers are taken shall be unable to come to any such public wharf, provided such steamboat or other vessel shall be employed at their own expense by the owner, consignee, master or person having charge of the ship or vessel from which such passengers are taken, for the purpose of landing the same, in consequence of their inability to bring such ship or vessel to said public wharf; and the provisions of the second section of this act shall apply to such steamboat or other vessel so employed.

Selling
tickets.

§ 7. Any person who shall sell, or cause to be sold, a passage ticket, or order for such ticket, to any emigrant passenger at a higher rate than one and a quarter cent per mile; or shall take pay for any ticket, or order for a ticket, under any false representation as to the class of said ticket, whether emigrant or first class, shall, upon conviction be deemed guilty of a misdemeanor, and be punished by a fine of two hundred and fifty dollars, and imprisonment in the county jail for not less than sixty days.

Fraudulent
ly obtain-
ing passage
tickets
from pas-
sengers.

§ 8. Any person who shall, directly or indirectly, by means of false representations, purchase or receive from any emigrant passenger any passage ticket, or who shall procure or solicit any such passenger, having a passage ticket, to exchange the same for any other passage ticket, or to sell the same and purchase some other passenger ticket, shall be deemed guilty of a misdemeanor; and upon conviction shall be punished by fine and imprisonment.

§ 9. Any person who shall sell or dispose of any ticket, or order for ticket or tickets, at a price or for a consideration beyond the highest price advertised for tickets by the company advertising at the highest price, published according to the provisions of this act or any other law, shall be, upon conviction thereof in any of the courts of this state, deemed guilty of a misdemeanor, and imprisoned therefor in one of the prisons of this state for a term of not exceeding two years.

CH. XXV.
Penalty for
selling
tickets over
regular
price ad-
vertised by
company.

§ 10. All acts and parts of acts inconsistent with this act are hereby repealed. Repealed.

CHAP. 224.

AN ACT to amend the several acts relating to the powers and duties of the commissioners of emigration and for the regulation of the marine hospital.

PASSED April 13, 1853; three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. The time allowed by the second section of chapter three hundred and thirty-nine of the laws of eighteen hundred and fifty to any owner or owners, consignee or consignees of any ship or vessel bringing emigrants or passengers to the city of New York, for giving the bond or bonds first mentioned in said section, or paying the money also therein mentioned, shall henceforth be twenty-four hours, instead of three days, from the landing of said passengers; and the time allowed by the said section to the said owner or owners, consignee or consignees, of any such ship or vessel for giving other bond or bonds mentioned in said section, shall be twenty-four hours, instead of six days, from the making of the requirement for such last mentioned bond or bonds.

Bonds
when to be
given.

§ 2. The said commissioners of emigration are and each of them is hereby vested with the same powers in regard to the administering oaths of office to employees, and to the binding out of children, with consent of parents or next of kin, actually chargeable upon them, and also in regard to persons in the institution, or any of them under the charge of said commissioners, for the prevention of punishment of an infraction or violation of the rules or orders and regulation of such commissioners or their officers in regard to such institutions, as are possessed by the governors of the alms house in the city of New York, or any of them, for the same purposes.

Powers of
commis-
sioners.

§ 3. The commissioners of emigration shall annually, on or before the first day of February in each year, report to the Legislature the amount of moneys received, under the provisions of this act, during the preceding year, and the manner in which the same have been appropriated; stating particu-

Annual re-
port.

PART I.

larly in detail the sum of each appropriation, and the purposes for which the same have been made.

Physician.

§ 4. The office of physician of marine hospital, as constituted by section seventeen of chapter three hundred and fifty of the Laws of eighteen hundred and forty-nine, is hereby restored, together with the duties and compensation of the same, as specified in sections eighteen and twenty, of said chapter three hundred and fifty of the Laws of eighteen hundred and forty-nine.

Powers of physician to appoint assistants.

§ 5. The physician of marine hospital shall have power to select and appoint, subject to the approval of the commissioners of emigration, such and so many assistant physicians, graduates in medicine, as may be found necessary for the proper medical treatment of the inmates of the marine hospital, and to suspend or remove any of the same; but the number and rate of pay of said assistants, physicians, shall be regulated and determined by the commissioners of emigration.

Nurses and orderlies

The physician of marine hospital shall have power to select, appoint and dismiss at pleasure, such and so many nurses and orderlies for the departments of such marine hospital as he may deem requisite for the proper care of the inmates thereof; and the commissioners of emigration shall regulate and determine the rate of pay of the nurses and orderlies employed at the marine hospital.

Patients at hospital.

§ 6. All discharges of patients from the marine hospital shall be in writing, and by the physician of the marine hospital, who shall be responsible for the same, and who is hereby expressly prohibited from discharging any patient sent to the marine hospital, and affected with any contagious or infectious disease, until such patient shall be cured of such disease; and the said physician of marine hospital shall receive into the marine hospital all cases of contagious, infectious and pestilential disease which may be sent thither by the health officer, or under the authority of the board of health of the city of New York, except itch and syphilis; which shall not be construed as diseases entitling those suffering from them to be admitted as patients into the marine hospital.

Officers and residence.

§ 7. All officers and employees of the marine hospital, except chaplains, shall be required to reside within the quarantine inclosure, and the commissioners of emigration are hereby directed to provide suitable accommodations for the same.

Powers and duties of marine hospital physician.

§ 8. The power granted to the health officer by an act entitled "An act relative to the public health in the city of New York," passed April tenth, eighteen hundred and fifty, in so far as relates to the arrest and detention of persons eloping from the marine hospital, or persons invading the quarantine grounds, is hereby granted to the physician of marine hospital for the purpose of enabling him to maintain the marine hospital as a quarantine establishment; and the said

physician of marine hospital is authorized and required to prescribe rules for regulating intercourse with the hospital and its inmates, and he is expressly prohibited from admitting visitors at all, when in his judgment there may be danger of their communicating disease without the precincts of the quarantine grounds.

§ 9. The physician of marine hospital shall present to the Legislature annually, on or before the first of March, a report of the general condition of the hospital under his charge, with the statistics of the institution in detail, and such other information and suggestions in regard to the same as he may deem advisable, and testify the same by his affidavit; he shall also furnish to the board of health of the city of New York and to the commissioners of emigration, whenever required by them so to do, an official return of the numbers and diseases of the patients in the marine hospital.

Annual report.

§ 10. The health officer shall have no authority or control over the marine hospital, nor any charge or care of the sick inmates or employees of the institutions; he shall at all times, however, have free access to the several wards, with the privilege of examining the condition of the sick inmates or employees of the institution; he shall at all times, however, have free access to the several wards, with the privilege of examining the condition of the sick sent to the hospital under his authority, for the purpose of enabling him to judge as to the necessity for detaining the vessels from which said sick may have been landed; but nothing in this act shall be construed so as to interfere with the rights, duties and powers of the health officer in regard to existing provisions of law, in so far as his control and authority over vessels and quarantine regulations upon the water may be concerned.

Health officer.

§ 11. The commissioners of emigration shall remove from the marine hospital and take charge of all emigrants whose quarantine has expired and who shall have sufficiently recovered from the diseases with which they were admitted on the notification in writing of the physician of marine hospital that such removal will not, with ordinary care, endanger the safety of the individual or the health of the community.

Removal of emigrants from hospital.

§ 12. The physician of marine hospital shall discharge the duties of superintendent of marine hospital, under the commissioners of emigration, and without further pecuniary compensation than that allowed him as physician.

Physician to act as superintendent.

§ 13. The amount for which the master, owner or owners, consignee or consignees, of any such ship or vessel may commute for any bond or bonds, authorized or required by or pursuant to the seventh section of chapter five hundred and twenty-three of the Laws of eighteen hundred and fifty-one, shall, from and after the passage of this act, be two dollars for each and every such passenger, instead of one dollar and fifty cents as now provided by law; and fifty cents of the amount commuted for any passenger or passengers shall be

Commutation.

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set aside as a separate fund for the benefit of each and every county in this state, except the county of New York. The commissioners of emigration shall deposit the moneys of said fund, so set apart, in any bank that the said commissioners may select, and the same, or as much of it as may be necessary, shall be distributed to the several counties, except the county of New York, once in every three months, and the balance that may be left after such three months' payment shall be paid over to the commissioners of emigration for general purposes.

Repeal.

§ 14. All acts and parts of acts inconsistent with or repugnant to the provisions of this act are hereby repealed.

CHAP. 619.

AN ACT to amend the act for the protection of emigrant passengers arriving at the city of New York, passed April 13, 1853.

PASSED July 21, 1853.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

**Runners
not to enter
vessels.**

§ 1. Any runner, or person acting for himself, or for and on behalf of or connected with any steamboat, railroad, or forwarding company, or emigrant boarding house, who shall solicit or book any passengers emigrating to the United States, and arriving at the port of New York, before such passenger shall have left the vessel in which he has so arrived, or who shall enter or go on board any ship or vessel, so arriving with emigrant passengers, prior to the landing of such passengers therefrom, and also any person, company, or corporation having employed such person for the purpose of soliciting and booking such passengers prior to their leaving the vessel in which they may arrive, shall be severally subject to a penalty of one hundred dollars for each offence, to be sued for and recovered in the same manner, and subject to the same provisions of law as enacted in respect to other penalties imposed by the several acts regulating the powers and duties of the commissioners of emigration. Any person violating the provisions of this section may also be indicted for a misdemeanor, which violation shall be held and taken to be a misdemeanor, and he shall, on conviction, be punished by fine not exceeding one hundred dollars, or imprisonment for sixty days.

Penalty.

Misdemeanor.

**Penalty
may be re-
mitted,
when.**

§ 2. In any case of violation of the provisions of this act, or of the act hereby amended, whenever it shall be made to appear to any court having jurisdiction thereof, upon satisfactory evidence, that such violation was not intentionally committed, or with a view to the profit of the person committing the same, or for or on behalf of some owner, consignee or other person, nor by any culpable negligence, it shall then be law-

ful for the said court to remit or compound the penalty for such violation, on such terms as may in their judgment be just and equitable to all persons interested in the matter.

§ 4. Nothing in this act, or the act hereby amended, shall be taken or construed to prevent any passenger arriving at the port of New York, and not detained under the authority of the laws for the preservation of public health, from leaving the vessel in which he so arrives whenever and in any way he shall prefer, upon his personal request, or demand so to do, to the commander of such vessel. Saving clause

§ 5. All acts and parts of acts inconsistent with the provisions of this act, are hereby repealed. Repeal.

CHAP. 426.

AN ACT to amend "An act concerning passengers in vessels coming to the city of New York," passed May 5, 1847.

PASSED April 13, 1855.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. The persons hereafter becoming chargeable upon any city, town, or county within this state for the payment of any expense of whose maintenance and support incurred by any such city, town, or county, it is made the duty of the Commissioners of Emigration to provide by the act concerning passengers in vessels coming to the city of New York, passed May 5, 1847, or any act amendatory thereof, shall be deemed and taken to include all persons otherwise within the description and provisions of such act or acts, who are or shall become the inmates of any alms house, lunatic asylum, work-house, hospital, nursery, house of refuge, asylum for juvenile delinquents, house of correction, penitentiary, jail, bridewell or prison under commitment, sentence or conviction by an officer or officers, court or magistrate, under any law of this state, as vagrants or disorderly persons. Liability to other cities, towns and counties.

CHAP. 474.

AN ACT for the protection of immigrants, second class, steerage, and deck passengers.

PASSED April 13, 1855; three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. It shall be the duty of all companies, associations, and persons, hereafter undertaking to transport or convey, or Rates of fare to be

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made
known.

engaged in transporting or conveying, by railroad, steamboat, canal boat or propeller, any immigrant, second class, steerage, or deck passenger, from the city, bay, or harbor of New York, to any point or place, distant more than ten miles therefrom, or from the cities of Albany, Troy and Buffalo, the town or harbor of Dunkirk, or the suspension bridge, to any other place or places, to deliver to the mayors of the city of New York, Albany, Troy, and Buffalo, on or before the first day of April in each and every year, a written or printed statement of the price, or rates of fare, to be charged by such company, association or person, for the conveyance of such immigrant, second class, steerage and deck passengers respectively, and the price per hundred pounds for the carriage of the luggage, and the weight of luggage to be carried free of such passengers from and to each and every place, from and to which any such company, association, or person shall undertake to transport and convey such passengers; and such prices or rates shall not exceed the prices and rates charged by the company, association or person, after the time of delivering such statement to the said mayors; and such statement shall also contain a particular description of the mode and route by which such passengers are to be transported and conveyed, specifying whether it is to be by railroad, steamboat, canal boat or propeller, and what part of the route is by each, and also the class of passage, whether by immigrant trains, second class, steerage or deck passage. In case such companies, association, or person, shall desire thereafter to make any change or alteration in the rates or prices of such transportation and conveyance, they shall deliver to the said mayors respectively a similar statement of the prices and rates as altered and changed by them; but the rates and prices so changed and altered, shall not be charged or received until five days after the delivery of the statement thereof to the said mayors respectively.

What passage tickets shall contain.

§ 2. Every ticket, receipt or certificate which shall be made or issued by any company, association or person, for the conveyance of any immigrant, second class, steerage or deck passengers, or as evidence of their having paid for a passage, or being entitled to be conveyed from either or any of the points or places in the first section of this act mentioned to any other place or places, shall contain or have endorsed thereon a printed statement of the names of the particular railroad or railroads, and of the line or lines of steamboats, canal boats and propellers, or of the particular boats or propellers, as the case may be, which are to be used in the transportation and conveyance of such passengers, and also the price or rate of fare charged or received for the transportation and conveyance of any such passenger or passengers with his or their luggage.

No higher rates of

§ 3. It shall not be lawful for any person or persons to demand or receive, or bargain for the receipt of any greater

CH. XXV.
fare to be
charged.

or higher price or rate of fare for the transportation and conveyance of any such immigrant, second class, steerage or deck passengers with their luggage, or either, from either or any of the points or places in the first section of this act mentioned, to any other point or place, than the prices or rates contained in the statements which shall be delivered to the mayors of the cities of New York, Albany, Troy and Buffalo, and said commissioners, respectively, as in the said first section provided for, or the price or rates which shall be established and fixed for the transportation and conveyance of such passengers and their luggage, or either, by the proprietors or agents of the line or lines, or means of conveyance, by which such passenger or passengers and their luggage are to be transported or conveyed. In all cases each immigrant over four years of age conveyed by railroad shall be furnished with a seat with permanent back to the same, and when conveyed by steamboat, propeller or canal boat, shall be allowed at least two and one-half feet square in the clear on deck. Such deck shall be covered and made water tight over head, and shall be properly protected at the outsides, either by curtains or partitions, and shall be properly ventilated.

§ 4. Any company, association, person or persons, violating or neglecting to comply with any of the provisions of the first or second sections of this act, shall be liable to a penalty of two hundred and fifty dollars for each and every offence, to be sued for and recovered in the name of the people of this state; and every person violating any of the provisions of the third section of this act, shall be deemed guilty of a misdemeanor, and on conviction thereof, the person offending may be punished by a fine of two hundred and fifty dollars, or by imprisonment not exceeding one year, or by both fine and imprisonment, in the discretion of the court; one-half of which fines, when recovered, shall be paid to the informer, and the other half into the county treasury where the action shall be tried or the conviction had.

Penalty for
violation.

§ 5. It shall be the duty of every magistrate who shall issue a warrant for the apprehension of any person or persons for violating the provisions of the third section of this act, within twenty-four hours after such person or persons shall have been taken and brought before him, to take the testimony of any witness who may be offered to prove the offence charged, in the presence of the accused, who may, in person or by counsel, cross-examine such witness. The testimony so taken shall be signed by the witness, and be certified by the magistrate, and in case such magistrate shall commit the accused to answer the charge, he shall immediately thereafter file the testimony so taken, with the district attorney of the county in which the offence was committed, to be used on the trial of or any further proceedings against the accused; and the testimony so taken shall be deemed valid and competent for that purpose, and be read and used with the like

Duty of
magistrate
on arrest
of offender.

PART I.

effect as if such witness were orally examined on such trial or proceedings. After the testimony of any witness shall be so taken, he shall not be detained, nor be imprisoned, or compelled to give any recognizance for his future appearance as a witness on any trial or proceeding thereafter to be had in the premises.

Place of
landing to
be designa-
ted.

§ 6. The commissioners of emigration shall, from time to time, designate some one place in the city of New York as they shall deem proper for the landing of emigrant passengers, and it shall be lawful for such passengers to be landed at such place so designated by the commissioners of emigration.

Site there-
for may be
procured.

§ 7. The commissioners of emigration shall have authority to purchase, lease, construct and occupy such wharves, piers, and other accommodations in the city of New York, as may be necessary for the accommodation of emigrant passengers for the purposes mentioned in the last preceding section.

[For Section 8 see Laws of 1857, ch. 579.]

§ 9. All acts or parts of acts inconsistent with the provisions of this act, are hereby repealed.

CHAP. 579.

AN ACT for the protection of emigrants and to amend chapter two hundred and nineteen of the laws of eighteen hundred and forty-eight, and chapter four hundred and seventy-four of the laws of eighteen hundred and fifty-five.

PASSED April 16, 1857; three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Licenses.

§ 1. The commissioners of emigration are hereby authorized and required to grant and issue licenses, and the same from time to time, in their discretion, to suspend, revoke or annul, to the owner or captain of any steamboat, steamtug, propeller, or barge, used or engaged, or to be used or engaged, for the purpose, in whole or in part, of the removing, taking off or conveying or transporting to any dock or pier in the city of New York, emigrant passengers, or their baggage, arriving at and being in any part of the port of New York, within this state, from the ship or vessel in which such emigrant passengers or their luggage shall have arrived at such part of said port, provided always that such licenses shall not be suspended, revoked or annulled, except for cause after opportunity for the party complained of to be heard.

Removing
of passen-
gers, &c.

§ 2. It shall not be lawful for any steamboat, steamtug, propeller, barge or other boat or vessel, or the owner or captain, or person having charge of the same, to go or be taken along side of any ship or vessel having such passengers on

board, being within this state, with the intent, or for the purpose of removing, taking off, conveying or transporting, or to remove, take off, convey or transport any of such passengers or the baggage of any such passengers, from such ship or vessel, being in this state, to any dock in the city of New York or Brooklyn, unless the license mentioned in the first section of this act shall have been granted, and issued to the then owner or then captain of such steamboat, steamtug, propeller, barge, or other boat or vessel, and be then existing and not suspended, revoked or annulled.

§ 3. The owner and owners jointly and severally, and the captain or person having charge of any steamboat, steamtug, propeller, barge or other boat or vessel, violating the provisions of the second section of this act, or any of them, shall be liable to a penalty of five hundred dollars, for each and every violation thereof; and in case any of such passengers, or the baggage of any of them, shall be taken off or removed from such ship or vessel, so being within this state, in or by any steamboat, steamtug, propeller, barge, boat or other vessel, without the license aforesaid, with the intent or for the purpose mentioned in said second section of this act, or in violation of any of its provisions, except in case of shipwreck or imminent danger thereof, the owner or owners, jointly and severally, and the captain or person having charge thereof, shall, in addition to the above penalty, be also liable to a further penalty of fifty dollars for each and every passenger, and for the baggage of each and every passenger so taken off, or conveyed from such ship or vessel; which penalties shall be deemed and be forthwith a lien on such steamboat, steamtug, propeller, barge, boat or other vessel, and may be, immediately upon such violation, sued for, enforced and recovered by and in the name of the commissioners of emigration, either by an action in any court having jurisdiction thereof, or by an attachment under and pursuant to article first of title eighth of chapter eight, of first part of the Revised Statutes, for which purpose the said commissioners shall forthwith be deemed to be, and be creditors of such steamboat, steamtug, propeller, barge, boat or vessel, and have a direct lien thereon. Penalties.

§ 4. Section five of chapter two hundred and nineteen of the laws of eighteen hundred and forty-eight, is hereby amended so as to read as follows:

No person shall, in any city of this state, solicit emigrant passengers or their luggage for emigrant boarding houses, passenger offices, forwarding transportation lines, or for steamers, ships or vessels bound or about to proceed to any port not within this state; or for any person or for any company selling, or offering for sale, passage tickets, or contracting or offering to contract for passage in any such steamer, ship or vessel without a license for that purpose, which shall expire at the end of one year from its date; such license may be Emigrant runners.

PART I.

issued and revoked in the discretion of the mayor of the city where such license may have been granted, except in the city of New York, in which such license may be issued or revoked only by and in the discretion of the commissioners of emigration, for cause as hereinbefore provided. Such person receiving such license shall pay the sum of twenty dollars, and give a bond, with two sufficient sureties, in the penalty of five hundred dollars, conditioned for the good behavior and the observance by him of the provisions of this act, to the mayor of the city issuing the same, or to the commissioners of emigration, as the case may be. The money thus received or collected on said bonds shall be for the benefit of said city, or of the emigrant fund. Every person so licensed shall wear, in a conspicuous place about his person, a badge or plate, of such character and in such time and manner as said mayor or, in the city of New York, as such commissioners shall prescribe, with the words "licensed emigrant runner" inscribed thereon, with his name and the number of his license. No person who is not of approved good moral character shall be licensed as such runner. Every person who shall solicit alien emigrant passengers, or others, for the benefit of boarding houses, passenger offices, or forwarding or transportation lines, or for any steamer, ship or vessel bound or about to proceed to any port not within the state of New York, or for any person or company selling or offering for sale passage tickets, or contracting or offering to contract for passage in any such steamship or vessel, upon any street, lane, alley, or upon any dock, pier or public highway, or in any other place within the corporate bounds of any city in this state, or upon any waters adjacent thereto, over which any of said cities may have jurisdiction, without such license, shall be deemed guilty of a misdemeanor, and shall be punished by imprisonment in the county prison or jail not less than three months, nor exceeding one year.

Bonds.

The bonds mentioned in the foregoing sections, may be sued by and in the name of the mayor of the city in which such license may have been issued, and in the city of New York by and in the name of the commissioners of emigration, in any court having cognizance thereof; and in case of a breach, the said mayor, or the said commissioners, shall recover the full penalty of said bond.

Personal baggage.

§ 5. All personal baggage of emigrant passengers arriving at the port of, and destined for the city of New York, shall be landed at the place or pier designated as the landing place in said city for emigrant passengers; and the captain, owner and consignees of every ship or vessel arriving at said port with emigrant passengers destined for said city, shall be jointly and severally subject and liable to a penalty of fifty dollars for each and every emigrant passenger, or his personal baggage, landed at any place or pier other than the place or pier aforesaid; which penalty shall be a lien upon such ship or

vessel, and may be enforced and recovered by and in the name of the commissioners of emigration, either by an action or by and in the name of the commissioners of emigration, either by an action or by warrant of attachment, under and pursuant to article first of title eighth of chapter eighth of the first part of the Revised Statutes.

§ 6. Section eight of chapter four hundred and seventy-four of the laws of eighteen hundred and fifty-five, is hereby amended so as to read as follows :

The health officer shall give notice, in writing, to the owner or owners, consignee or consignees, master, commander or person having charge of every vessel, having emigrant passengers on board of such vessel, destined for the city of New York, to land such passengers and their personal baggage, at such pier or place in the said city of New York, as has been or may at any time be designated specially by the commissioners of emigration, for the landing of emigrant passengers and their personal baggage; and it shall not be lawful to land such passengers or their personal baggage, at any other pier or place; and the owner or master of any vessel, from which passengers or their personal baggage, shall be landed in violation of the provisions of this section, shall be subject to a penalty of fifty dollars for each and every person, or his baggage, so landed in violation thereof; which penalty shall be forthwith a lien on such ship or vessel, and may be immediately, upon such violation, sued for, enforced and recovered, with costs of suit, in the name of and by the commissioners of emigration, either by an action in any court having cognizance thereof, or by attachment under and pursuant to article first of title eighth, chapter eighth, of the first part of the Revised Statutes, for which purpose the said commissioners of emigration shall forthwith be creditors of such ship or vessel, and have a direct lien on such ship or vessel, for said penalty; the said penalty, when recovered, to be applied and used by the said commissioners for the purposes for which said commissioners are constituted.

Duty of health officer.

§ 7. Nothing in this act contained shall be so construed as to alter, impair, or modify the existing laws and regulations regarding quarantine, or concerning the powers given to, and duties imposed upon, the health officer of the port of New York, for the protection of the public health.

Qualification of this act.

CHAPTER XXVI.

Indians.

CHAP. 29.

AN ACT relative to the different tribes and nations of Indians within this state.

PASSED 10th April, 1813.

Sales by,
and con-
tracts with
Indians for
lands.

Declared an
offence.

Penalty.

§ 1. *Be it enacted by the People of the State of New York, represented in Senate and Assembly,* That if any person, without the authority and consent of the legislature of this state, shall, in any manner or form, or upon any terms whatsoever, purchase any lands within this state, of any Indian residing therein, or make any contract with any Indian for or concerning the sale of any lands within this state, or shall in any manner give, sell, demise, convey, or otherwise dispose of any such lands, or any interest therein, or offer so to do, or shall enter on or take possession of, or settle on any such lands, by pretext or colour of any right or interest in the same, in consequence of any such purchase, or contract made or to be made, since the fourteenth day of October, one thousand seven hundred and seventy-five, and not with the authority and consent of the legislature of this state, every such person shall, in every such case, be deemed guilty of a public offence, and shall, on conviction thereof before any court having cognizance of the same, forfeit and pay to the people of this state, two hundred and fifty dollars, and be further punished by fine and imprisonment, at the discretion of the court.

7 N. Y., 401; 4 N. Y., 293; 15 B., 83; 3 B., 492; 2 B., 639; 11 Pai., 607; 5 D., 628; 6 H., 546; 8 Cow., 189; 20 J. R., 188, 693; 19 J. R., 127; 18 J. R., 506; 15 J. R., 264; 14 J. R., 181, 472; 7 J. R., 290; 2 J. Ca., 344.

Suits not
maintainable on bond,
bill, note,
&c.,
against cer-
tain tribes
of Indians.

§ 2. *And be it further enacted,* That no person shall sue or maintain any action on any bond, bill, note, promise or other contract hereafter to be made against any of the Indians, called the Stockbridge Indians, or of the Seneca tribe or nation, nor against any Indian residing in Brothertown, or on any lands reserved to the Oneida, Onondaga, or Cayuga Indians, and every person who shall sue or prosecute any such action against any of the said Indians, shall be liable to pay treble costs to the party grieved: *Provided,* That this section shall not extend to any action or suit on any contract made before the first day of July, in the year one thousand seven hundred and ninety.

4 N. Y., 293; 3 B., 492; 11 Pai., 607.

CH. XXVI.
 Spirituous
 liquors not
 to be sold
 to Indians,
 in certain
 counties.

§ 3. *And be it further enacted*, That if any person shall sell to any Indian belonging to the Oneida or Stockbridge tribe, any rum, brandy, gin, or other ardent spirits, within the counties of Oneida, Madison, or Chenango, he shall be deemed guilty of a public offence, and on conviction thereof, be fined at the discretion of the court, not exceeding twenty dollars for one offence, and shall also forfeit the sum of five dollars for every such offence, to be recovered in an action of debt with costs, in any court having cognizance thereof, by any one who will sue for the same, the one half of which forfeiture to be paid to the prosecutor, and the residue to the overseers of the poor of the town in which such recovery shall be had, for the use of the said poor: *Provided*, That on the recovery of such forfeiture, the offender shall not be liable to any other or further prosecution for the said offence: and no Indian or other person shall sell or dispose of any spirituous liquors or ardent spirits, in that part of the town of Paris called Brothertown, without first obtaining a license for the same, under the hands and seals of three of the superintendents of the Brothertown Indians, under the penalty of twenty dollars, to be recovered before any three of the keepers of the peace of Brothertown, the one half of which shall be for the use of such Indian as shall sue for the same, and the other half for the use of the poor in Brothertown.

Proviso.

No spirituous liquors to be sold to the Brothertown Indians without license.

§ 4. *And be it further enacted*, That if any person shall sell any rum, brandy, gin, or other ardent spirits, within the limits of the tract of land owned by the Muheconnuck or Stockbridge Indians, or within the reservation lands of the Oneida or Brothertown Indians, he shall forfeit twenty dollars for every such offence, to be recovered with costs in manner aforesaid, before any justice of the peace; one half thereof to be paid to the prosecutor, and the residue to the district attorney of the district within which the said tribes of Indians reside, to be by him paid into the treasury of this state, for the use of the tribes of Indians where such offence shall happen.

No spirituous liquors to be sold to Indians within a certain tract.

§ 5. *And be it further enacted*, That no pawn taken of any Indian within this state, for any spirituous liquor, shall be retained by the person to whom such pawn shall be delivered; but the thing so pawned may be sued for and recovered, with costs of suit, by the Indian who may have deposited the same, before any court having cognizance thereof.

No pawn to be taken of Indians for liquor.

§ 6. *And be it further enacted*, That it shall be lawful for the comptroller, on the order of the person administering the government of this state, to draw his warrant on the treasurer, for the payment of such sums of money as shall from time to time be necessary for incidental charges attending on Indian affairs, not exceeding five hundred dollars in any one year; and it shall also be lawful for the person administering the government of this state, to appoint such persons as he shall see fit, to provide for and entertain all Indians who may visit the seat of government on any busi-

Incidental expenses of Indian affairs.

PART I.

ness, and to order the comptroller to draw his warrant on the treasurer for such sum or sums of money, to defray the expense of entertaining such Indians, in favor of such persons as he shall direct, not exceeding in any one year the sum of one thousand dollars.

[Section 7 ratifies certain treaties with and grants by Indians to the state.]

Certain
sums to be
annually
paid to
certain In-
dians.

Oneida
tribe.

Onondaga.
Cayuga.

Posterity
of the Fish
Carrier.

When to be
paid.

How to be
paid.

Proviso.

Annuity to
be paid the
christian
party of
Oneida In-
dians.

And to the
Oneida na-
tion.

To the Cay-
uga nation.

§ 8. *And be it further enacted*, That the treasurer of this state shall annually, on the warrant of the comptroller, pay to the order of the person administering the government of this state, out of any monies in the treasury, the following sums, to wit: the sum of four thousand eight hundred and sixty-nine dollars and twenty-eight cents, for the use of the Oneida tribe of Indians; the further sum of two thousand dollars for the use of the Onondaga tribe of Indians; the further sum of two thousand three hundred dollars, for the use of the Cayuga tribe of Indians; and the further sum of fifty dollars, for the use of the posterity of the Cayuga chief, Fish Carrier, being the annuities to be paid to the said tribes and the posterity of the Fish Carrier respectively, and in lieu of all former annuities, in conformity to the said articles and the said treaty with the Oneida Indians, which said annuities shall be paid on the first day of June in every year, at the several places specified in the said articles and treaty for that purpose, at the expense of this state; and the person administering the government of this state, is hereby authorised to cause the said annuities to be paid in such manner, and by such persons as he shall think proper, and as may be most agreeable to the said Indians and the least expensive to this state, and for that purpose he may direct the surveyor-general to perform the service, or make such arrangements or contracts with any other persons relative thereto, as he may judge proper: *Provided however*, That such part of each of the said annuities as the person administering the government of this state shall in his discretion direct for that purpose, shall be first appropriated to the support of the public school, if any, instituted within the limits assigned to the said tribes respectively, in which Indian children shall be taught, and that the monies so appropriated for the support of public schools within the said Oneida tribe, shall be distributed in such manner as that the several villages of the said Oneida tribe may, as near as may be, equally enjoy the benefit thereof: *And further*, The treasurer of this state shall, annually, on the warrant of the comptroller, pay to the order of the person administering the government of this state, such annuity as shall become due to the said christian party of Indians, by the stipulations contained in the treaty or purchases referred to in the preceding section; *and also*, the sum of three hundred dollars annually, for the Oneida nation of Indians, to be paid to the said Indians pursuant to the treaty referred to in the said preceding section; *and also*, such annuity as shall become due to the Cayuga nation by the stipulations contained in the

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All other annuities.

treaty or contract with the said Indians, also specified in the said preceding section; and all such other annuities as shall have arisen or become due by virtue of any contract, treaty, or purchase, with any of the tribes or nations of Indians in this state, made under the sanction of the legislature thereof, or subsequently ratified by law.

[Section 9 confirms certain limits to the Stockbridge Indians.]

[Section 10 temporary.]

[Section 11 repealed by Laws of 1821, chap. 204.]

[Section 12 temporary.]

§ 13. *And be it further enacted*, That it shall and may be lawful for the said St. Regis Indians, on the first Tuesday of May next, and on the first Tuesday of May in every year thereafter, to hold a town meeting on their said reservation within this state, and by a majority of male Indians, above twenty-one years of age, to choose a clerk, who shall keep order in such meeting, and enter in a book to be provided by him for that purpose, the proceedings of the said meeting.

St. Regis Indians may hold annual town meetings.

And elect a clerk and his duties declared.

§ 14. *And be it further enacted*, That it shall and may be lawful for the said tribe, at any such meeting as aforesaid, to make such rules, orders and regulations, respecting the improvement of any other of their lands in the said reservation, as they shall judge necessary, and to choose trustees for carrying the same into execution, if they shall judge such trustees to be necessary.

May make rules as to the improvement of their lands.

And elect trustees to execute the same.

[Section 15 temporary.]

§ 16. *And be it further enacted*, That it shall be the duty of the district attorney residing in the district including the county of Washington, to advise and direct the St. Regis Indians residing at St. Regis, in the controversies among themselves, and with any other person, and defend all actions brought against any of them by any white person, and commence and prosecute all such actions for them, or any of them, as he may find proper and necessary; and in all prosecutions in their behalf, it shall not be necessary to name any individual of the said tribe, but it shall be sufficient to bring the same in the name of the St. Regis Indians, any law to the contrary notwithstanding.

Suits among the St. Regis Indians.

See Laws of 1818, ch. 283.

§ 17. *And be it further enacted*, That it shall be lawful for the male Indians, above the age of twenty-one years, residing in New Stockbridge, to meet together on the first Tuesday of May annually, in said New Stockbridge, and there by a plurality of votes elect the following officers: One clerk, one marshal, and three peace makers; and the clerk shall preside at such meetings, who shall enter the proceedings thereat in a book to be kept by him for that purpose, and the proceedings of the peace makers shall be entered by him in the same book; and the marshal shall execute all orders of the peace makers, made in pursuance of this act: *And further*, It shall be lawful for the peace makers to call special meetings of the said Indians, at such times and places and on such occasions

Officers to be elected in New-Stock-bridge.

Powers and duties of peace-makers.

PART I.

as they shall deem necessary; and the said Indians, at their said annual or special meetings, may, by a like plurality of votes, determine on the laying out of their lands for separate improvements, and to make such by-laws for the improvement of their common lands, for laying out and working on the highways, for regulating fences and the trespassing of cattle, and under such penalties, not exceeding three dollars for any one offence, to be sued for and recovered by any one of the said Indians in the manner hereinafter mentioned, as they shall deem necessary; to admit any Indian of any other tribe or nation to become an inhabitant of New Stockbridge, and to enjoy the same privileges with them; and the said peace makers shall lay out such parcel for the separate improvement of any person or family as shall have been directed at any such meeting, which parcel shall be marked out and described by them, and the description thereof in writing delivered to the said clerk, to be entered in the said book, and such parcel so allotted shall remain to such person and his legal representatives, but without the power of alienation, except that he or they may sell the improvements thereof to any other Indian residing in New Stockbridge, his or their assigns, but such sales shall be entered by the said clerk in the said book; and every person entitled to and possessed of such parcel, may sue any white person, Indian or other person, for any trespass committed thereon; and the said peace makers shall likewise bring actions in their own names for the trespasses committed on any of the said undivided lands, in any court having cognizance thereof; and if such trespass shall be committed by a white person, or on lands allotted as aforesaid, by cutting down timber, or improving or occupying the said lands without the consent of such peace makers, such white person shall forfeit twenty-five dollars, recoverable with costs, by and in the names of the said peace makers, in any court having cognizance thereof, and to be paid by them as they shall deem most beneficial to the said Indians; and all contracts relative to any undivided land to be made by any one of the said Indians with another, are hereby declared void; and the said peace makers shall lay out such roads and highways, and from time to time order the inhabitants to work the same, and for so many days as shall have been directed at any annual or special meeting of the said Indians: *And also*, shall hear and determine all matters between any of the said Indians, relative to any trespass, debt, demand or penalty, under any by-law made pursuant to this section, and to direct the said marshal to cause the parties and witnesses to be brought before them, and to hear their allegations and proofs; and in case the parties shall not comply with the determination of the said peace makers, then such peace makers shall commit their determination to writing, and the same being entered in the said book by the said clerk, shall entitle the party in whose favor such determina-

tion shall have been made, *provided*, the same do not exceed twelve dollars and fifty cents, to recover the sum awarded as upon a judgment of record in any court having cognizance thereof; and it shall be competent for any two peace makers to execute all the duties by this act delegated to all; and the missionary to the said Indians shall be entitled to the like remedy for any debt or demand against any of the said Indians, as the said Indians have against each other.

§ 18. *And be it further enacted*, That one hundred acres of the common land of the said Indians, at the northeast corner of the said town heretofore designated by the said peace makers, and entered in the said book, for the support of a minister of the gospel, shall be and remain for the use of the present minister and his successors, with power to use, improve or lease the said land; but whenever there shall be no missionary or settled minister, the said peace makers may improve or lease the said land, until such vacancy shall be filled, and the moneys arising therefrom shall be disposed of as shall be directed by an annual or special meeting of the said town.

Appropriation for a minister of the gospel.

§ 19. *And be it further enacted*, That the tract of land heretofore set apart for the Indians called the New England Indians, consisting of the tribes called the Mohegan, Montock, Stonington and Narragansett Indians, and the Pequots of Groton, and Nehanticks of Farmington, shall be and remain to the said Indians and their posterity, but without any power of alienation by the said Indians, or of leasing or disposing of the same or any part thereof; and the said tract shall be called Brothertown, and shall be deemed part of the town of Paris, in the county of Oneida, for all purposes in the general execution of the laws and the administration of justice, in any of the courts of this state, and any proceeding incident thereto, except in cases provided for by this act.

Lands set apart for Brothertown Indians.

20 J. R., 693; 2 J. Ca., 344; 2 B., 639.

§ 20. *And be it further enacted*, That the lots or parcels of land heretofore set apart in Brothertown, in pursuance of any former law of this state, for the separate use of any of the said Indians residing therein, shall continue to be separately held and enjoyed by such Indians respectively; and it shall and may be lawful for any Indian residing in Brothertown to whom any lands have been assigned, to give and bequeath by will in writing, his personal estate, also to give and devise any right, title or interest which he may acquire to any lands, except the lands set apart for the Brothertown Indians; and every such will and devise shall be executed and proved as is directed by the act, entitled "An act concerning wills," passed the fifth day of March, 1813, and be of the same validity and effect as if made by any white person; and it shall be lawful for the person administering the government of this state, by and with the advice and consent of the council of appointment, as often as may be necessary, to appoint and commis-

Partition and devise of lands in Brothertown.

Appointment and duties of superintendents.

PART I.

sion five or more superintendents of the affairs of the Brothertown Indians, who shall hold their office for the term of three years, unless sooner removed by the said council: *Provided*, That the superintendents already appointed shall continue to hold their respective offices during the pleasure of the said council: and the said superintendents, or a major part of them, on application to them made by or on behalf of any particular Indian, shall have power to determine whether such Indian be entitled to settle on the said lands, and if so, to assign to such Indian, at their discretion, a particular lot or parcel of land for that purpose; and it shall not be lawful for any Indian or Indian family, or other person, to take possession of any part of the said lands, unless the same be assigned as aforesaid; and if any Indian to whom any part of the said lands hath been or shall be assigned as aforesaid, hath neglected or shall neglect to take possession of the same within one year after becoming entitled thereto, or hath left or shall leave Brothertown for the space of one year, such Indian shall be deemed to have forfeited all right to the said land, and the said superintendents shall thereupon, at their discretion, assign the same to any other Indian then residing in and entitled to land in Brothertown; and that no accounts of any of the superintendents shall be allowed by the comptroller, unless the same shall be approved by a majority of the said superintendents, to be certified by them; and that the vouchers and receipts for such advances so made, shall accompany the same account, together with an oath or affirmation, that the articles furnished or services performed in such account, were furnished or performed by such superintendent or his order for the said Indians, and not for the benefit of any other person whomsoever.

Rule of descents
among said
Indians.

§ 21. *And be it further enacted*, That upon the death of any Indian residing in Brothertown, to whom any land hath been or shall be assigned as aforesaid, or who shall be entitled thereto, if such Indian shall die possessed thereof, leaving issue, the same shall go to and be equally divided among such issue, if they are all in equal degree of kindred to the deceased; but if such Indian shall leave a child or children, and the issue of a deceased child or children, then such issue shall stand in the place of the parent, and take only such share as the parent would have taken, if living, and the like division, *per stirpes*, shall be made among the descendants of such deceased Indian in the remotest degree; and if such Indian leave no issue, then the said land shall revert to the Brothertown Indians, and the said superintendents shall thereupon assign the same to some other Indian or Indians entitled thereto as aforesaid: *Provided however*, That the widow of the deceased shall in all cases have a right to continue in the house her husband died possessed of, during her widowhood; and the superintendents shall also assign to her so much of the said land of her husband as they may think necessary.

Proviso.

[Section 22 provided for an annuity to the Brothertown Indians which was extinguished by Laws of 1841, ch. 234.]

§ 23. *And be it further enacted*, That it shall and may be lawful for any of the Indians entitled to and residing on lands in Brothertown, and to whom land adjoining the public school has been granted, to sell and convey to the peace makers of Brothertown, so much of the said land adjoining the said public school, as in the judgment of the said peace makers may be sufficient for the use and accommodation of the master of the said school for the time being, not exceeding twenty-five acres, for which such Indian or Indians shall be paid by the superintendents out of the annuity of the Brothertown Indians, such sum per acre as shall be agreed on by such Indian or Indians and the said peace makers, and approved of by the said superintendents; and the said land so to be purchased as aforesaid, shall be held by the said peace makers and their successors in trust, for the sole use and accommodation of such schoolmaster as shall from time to time be employed in keeping the said public school; and that it shall and may be lawful for the superintendents, or a majority of them, by and with the advice and consent of the person administering the government of this state, to appropriate, purchase or lease so much of the Indian land in Brothertown which has not been set apart to particular families or individuals, or to purchase or lease so much land already set apart, for the purpose of erecting for the use of the said Indians, a house for public worship in Brothertown, and other buildings necessary for the education and morals of their children, in such manner as to the superintendents, or a majority of them, shall appear most conducive to their future welfare; and by the advice and consent of the person administering the government of this state for the time being, out of the annuity to be paid annually to the said Indians, to defray the expenses of the education, and, if necessary, the support of the said Indian children; and in case the superintendents shall lease or purchase such lands as aforesaid, for the purpose above mentioned, the rent or purchase money shall be paid out of the annuity as it shall become due to the said Indians, and also the expenses of building the house for public worship, and the other buildings for the education of Indian children.

§ 24. *And be it further enacted*, That the superintendents of the Brothertown Indians for the time being, be, and they are hereby appointed superintendents of the Stockbridge Indians, for the purposes hereinafter mentioned; that is to say, it shall and may be lawful for the said superintendents, or a majority of them, by and with the advice and consent of the person administering the government of this state for the time being, and by and with the consent of the said Stockbridge Indians, to sell or to lease so much of their land in New Stockbridge, as may enable the said superintendents to

Provision
for educa-
tion in
Brother-
town.

Superinten-
dents of
the Stock-
bridge In-
dians.

PART I.

Relative to
the disposal
of
lands.

repair their mills, to create such fund as they may judge necessary for the support of such old and decrepid persons as may be unable to procure a subsistence, and to make such further provision as they shall judge necessary for the better educating of the Indian children in New Stockbridge.

§ 25. *And be it further enacted*, That on the sale of any land for the purposes above mentioned, the said superintendents shall make a conveyance of the same, take a mortgage from the purchaser or purchasers for the security of the payment of the purchase money at the time stipulated for the payment thereof, similar to those taken from the purchasers of lands in Brothertown, and shall cause the same to be lodged with the comptroller in his office; and the interest arising therefrom shall annually, and the principal when the same shall become due, to be paid to the said superintendents by the treasurer, on the warrant of the comptroller; and in case the superintendents shall judge it expedient to dispose of any part of the said lands on perpetual or other leases, such leases shall be taken in the name of the people of this state, and lodged with the comptroller in his office, and the rents arising therefrom shall, in like manner as aforesaid, be paid to the superintendents for the purposes aforesaid: *Provided always*, That no more than five hundred acres of land shall be sold or leased by the superintendents, until the further order of the legislature.

Accounts of
superintendents of the
Stock-
bridge In-
dians.

§ 26. *And be it further enacted*, That the accounts of the said superintendents in respect to the Stockbridge Indians, shall be audited by the comptroller, in like manner as their accounts are directed to be audited in this act in respect to the Brothertown Indians; and that they make annually a report to the person administering the government of this state for the time being, of their proceedings in pursuance of this act in respect to the said Stockbridge Indians.

Appoint-
ment and
duties of
attorney
for Indians.

§ 27. *And be it further enacted*, That it shall be lawful for the person administering the government of this state, as often as may be necessary, by and with the advice and consent of the council of appointment, to appoint and commission some proper person, learned in the law, to be the attorney of the Brothertown, Oneida and Stockbridge tribes of Indians, during the pleasure of the said council; but the person already appointed attorney to the Brothertown Indians, shall continue as the attorney of the said Indians during the pleasure of the said council; and that the said attorney shall, from time to time, advise and direct the said Indians in the controversies among themselves, and with any other person, and defend all actions brought against any of them by any white person, and commence and prosecute all such actions for them, or any of them, as he may find necessary and proper; and in the prosecution and defence of any such actions, he shall observe and pursue such advice and directions as shall be given him, if any, by the said superintendents, or

person administering the government of this state; and shall receive as a compensation for his services and expenses in the premises, the yearly salary of one hundred and fifty dollars, to be paid out of the said interest money.

[Office abolished by Laws of 1841, ch. 234, and 1847, ch. 486.]

18 J. R., 506; 14 J. R., 335; 11 Pal., 607.

§ 28. *And be it further enacted*, That it shall be lawful for any Indian, whether male or female, to whom any of the said land in Brothertown has been, or shall be assigned as aforesaid, or who shall become entitled to the same, to sue and maintain actions of trespass, and to recover damages to his or her own use, for any trespass which shall be committed upon such land: *Provided*, That if any Indian, to whom any land hath been or may be assigned, shall neglect to improve the same by clearing and putting in good fence, four acres of the same, within four years after such assignment, and within two years thereafter build a good log or frame house thereon, such Indian shall be deemed to have forfeited all right to such land.

9 J. R., 362.

[Section 29 related to the attorney of the Brothertown Indians, which office was abolished by Laws of 1841, ch. 234.]

§ 30. *And be it further enacted*, That the superintendents of the affairs of the Brothertown Indians, be, and they are hereby empowered to lease the lands assigned or belonging to any particular Indian in Brothertown aforesaid, who has died or may die, leaving a widow and infant children, or leaving a widow only, or infant children, to such person as they shall judge proper, who shall covenant to keep such land in good fence and repair, for such term of time as they shall deem necessary for the support of such widow and children, or for such widow only, or for such infant children, as the case may be, not exceeding the term of fourteen years, at such rent, to be paid in the produce of such land, as they shall judge reasonable; to be applied to the maintenance of such widow and children as aforesaid; and the said superintendents shall appoint proper persons to have the care and charge of such children.

§ 31. *And be it further enacted*, That it shall and may be lawful for the superintendents of the Brothertown Indians for the time being, or a majority of them, by and with the advice and consent of the person administering the government of this state for the time being, and by and with the consent of the Stockbridge Indians, to sell or lease so much of their lands on the turnpike road in one or more parcels, as they shall judge most convenient for keeping public houses for the accommodation of travelers, and shall take such securities for the same, and cause their accounts to be audited, and a report made of their proceedings, as is directed by the twentieth section of this act: *Provided always*, That no more land than

Relative to
trespasses
on Indian
lands.

Provision
made for
certain
widows and
children of
Indians.

Public
houses for
travelers.

Proviso.

PART I.

Peace
makers to
be appoint-
ed in Bro-
thertown.
and their
general
powers and
duties.

ents: *And further*, That the interest of the moneys arising from the sale of the said land, or from the rents thereof, shall be applied by the said superintendents for the purposes mentioned in the eighth section of this act.

[Section 32 personal.]

§ 33. *And be it further enacted*, That it shall and may be lawful for the person administering the government of this state, by and with the advice and consent of the council of appointment, to appoint not exceeding five, nor less than three of the said Indians to be keepers of the peace or peace makers, to hold their offices for three years, unless removed by the said council; and the said keepers of the peace shall severally have power to keep the peace in Brothertown, and a majority of them shall have power to hold a court at the school-house, or at such other place in Brothertown as they shall appoint, on the first Monday in every month, and in such court to hear and determine all disputes and controversies between any persons residing in Brothertown aforesaid, concerning any debt, demand or trespass, where the sum due or damages sustained shall not exceed twenty dollars, and all causes of assault and battery between the Brothertown Indians, to the amount of twelve dollars and fifty cents; and on complaint of the plaintiff, may issue their warrant to the marshal to bring the defendant forthwith before them, and try, give judgment, and issue execution thereupon as in other cases; and all actions for the recovery of any penalty of any by-law to be made at any town meeting in Brothertown, as hereinafter mentioned: and it shall be lawful for either of the said keepers of the peace, upon complaint made to him, to cause the person complained of, to be summoned to appear at the next court to be held at the school house or other place appointed as aforesaid in Brothertown, to answer the complaints; and the said keepers or the major part of them, shall, at such next court or other court to which the court may be adjourned, hear and examine the allegations and proofs of the parties, and make such order and decree between them as shall appear to them to be just, and if such order and decree be not performed in one month thereafter, shall then cause the sum adjudged or decreed to either party to be levied by distress and sale of the goods and chattels of the party who shall be adjudged or decreed to pay the same, together with such fees as are hereinafter allowed to the marshal for executing the process, but the said keepers shall not take any fees for their services; and it shall be lawful for the said keepers to adjourn any cause depending before them to the next court, whenever they shall find it necessary; and if the defendant shall not be personally summoned upon the process against him, and shall not appear at the return thereof, a new summons shall be issued; but if he shall have been personally summoned, then the court may at the return of the summons proceed to hear and determine the cause whether the defend-

ant appears or not, unless a reasonable excuse shall be offered, in which case they shall adjourn the cause to the next court, and the judgment of the said keepers, or a majority of them, who shall attend upon the hearing of any cause, shall be conclusive between the parties; and whenever any order or decree is made by the said keepers, it shall and may be lawful for them to cause the amount of such order or decree to be immediately levied by distress and sale of the goods and chattels of the person against whom such order or decree shall be made: *Provided*, The person in whose favor such order or decree is made, shall make it appear to the satisfaction of the said keepers by his own oath or the oath of any other person, that he will be in danger of losing the sum so decreed if delay of execution be allowed: *And further*, That the marshals of Brothertown shall be allowed for serving a summons or execution, mileage for one mile, twelve and a half cents, and for every mile more, six cents; and that it shall be lawful for any one of the said keepers of the peace to issue a subpoena, the same being drawn in as brief a form as may be, and subscribed by such keeper, to summon any person, whose attendance may be required as a witness in any cause instituted before the said keepers; and if any person so summoned, shall neglect to appear and give testimony in such cause, or render a sufficient excuse for his non-attendance to the satisfaction of such keepers, every such person shall forfeit to the party on whose behalf he shall be summoned, the sum of five dollars, to be recovered in an action of debt, in the name of such party, before the said keepers.

Fees of
marshal.

[Sections 34, 35 and 36 related to the attorney of the Brothertown Indians, which office was abolished by Laws of 1841, ch 234.]

§ 37. *And be it further enacted*, That it shall be lawful for the male inhabitants of Brothertown, of the age of twenty-one years and upwards, and they are hereby required to assemble together and hold town meetings at the said school-house, on the first Tuesday of April in every year, at which meeting the senior keeper of the peace then present shall preside, and then and there to elect one town clerk, two overseers of the poor, two marshals, and so many overseers of the highways as the majority of the inhabitants so met shall think necessary, who shall hold their respective offices for one year, and until others shall be chosen in their places: *Provided*, That no Indian shall be eligible to perform any office in Brothertown, unless two of the superintendents shall grant a certificate under their hands, to be entered in the clerk's book, that he has not been in the practice of making an improper use of spirituous liquors for the space of one year previous to the giving of such certificate; and if any of the officers so chosen shall refuse to serve, or shall die, or remove out of town, or become incapable of serving, before the next annual town meeting, then and in every such case, another or others shall be elected in his or their places in the manner aforesaid, at a town meeting to be

Town meetings in Brothertown: officers to be elected thereat, &c.

PART I.

held for that purpose; and the said inhabitants of Brothertown are hereby authorized, at their annual town meeting, or at any other town meeting to be held for that purpose from time to time, to make and establish such regulations and by-laws as the majority of them so met may think necessary and convenient, for the better relief of the poor, and for binding out children whose parents are dead or absent; and for ascertaining what bridges, and what part of any highway each of the overseers of the highways shall have the care of, and which of the inhabitants shall be obliged to work on the highways, and how many days each of them shall work thereon; and for ascertaining the sufficiency of fences, and the times, places and manner of preventing or permitting cattle, horses, sheep and swine, or any of them, to go at large; and for ascertaining damages done by trespasses, and for maintaining good order among themselves, and concerning any other matters relative to their own affairs; to impose such penalties on the offenders against such regulations and by-laws, or any of them, as the majority of the inhabitants so met shall deem proper, not exceeding five dollars for any offence, to be recovered with costs, by any inhabitant of Brothertown who shall sue for the same, by action of debt, before the said keepers of the peace, or any three of them, the one half of which penalty, when recovered, shall be for the use of the person who shall sue for the same, and he shall pay the other half to the overseers of the poor of Brothertown, to be by them applied for the relief of the poor; and that all such regulations and by-laws shall be entered by the town clerk in a book to be provided for the purpose, and shall continue in force until revoked or altered by some subsequent town meeting; but no special town meeting shall be held for any purpose, unless notice thereof, signed by two or more of the said keepers of the peace, be fixed upon the door of the school-house in Brothertown, at least six days before the day of holding such town meeting.

Commissioners of highways.

§ 38. *And be it further enacted*, That the said keepers of the peace shall be commissioners of the highways in Brothertown; and they, or the majority of them, shall have power, from time to time, to alter any highway in Brothertown, and to lay out others as there may be occasion, and to direct how and when the same or any of them, or any part thereof, shall be made, mended or repaired: *Provided always*, That all highways by them laid out, shall be at least four rods wide, and they shall cause a record thereof to be entered by the town clerk of Brothertown; and the said overseers of the highways shall cause the highways and bridges of which they shall be respectively chosen overseers, to be repaired and made according to the directions of the said commissioners, and shall warn the inhabitants to work thereon whenever it shall be necessary, and shall superintend and direct the same: *And further*, It shall be the duty of the keepers of the peace, or the

majority of them, laying out such road, to appraise the damages sustained by the proprietor of any such land thereby, which shall be paid to such proprietor out of the annuity of the said Indians; and any person conceiving himself aggrieved by any such appraisement, may appeal therefrom to one of the superintendents and the attorney of the said Indians, whose determination shall be final in the premises.

§ 39. *And be it further enacted*, That the marshals to be chosen in Brothertown as aforesaid, shall have the like powers and authority there as constables of other towns in this state have by law in their towns, and shall be entitled to twelve and an half cents for serving every summons, and twenty-five cents for serving every execution for any sum not exceeding two dollars and fifty cents, and at the rate of ten cents in the dollar for serving every execution for any such sum above two dollars and fifty cents.

[Section 40 personal and local.]

§ 41. *And be it further enacted*, That it shall be the duty of the superintendents to be appointed in pursuance of this act, annually to furnish the said peace makers with the account of their expenditures, audited by the comptroller, and the state of the funds belonging to the Brothertown Indians; and the said superintendents shall, from time to time, render an account to the person administering the government of this state, of the moneys remaining in their hands of the annuity of the Brothertown Indians, over and above their expenditures authorized by law to the use of the said Indians.

§ 42. *And be it further enacted*, That the said keepers of the peace shall be guardians of the persons and property of all infants in the said town, who shall not have any parents there to take care of them; and the said keepers shall distribute the personal property of such Indian as shall die intestate, according to the laws of this state, relative to the distribution of the personal estate of any citizen, subject to an appeal to such superintendents and attorney, in case any person shall conceive himself aggrieved by such distribution; and such keepers shall be entitled to such compensation for their services under this section, as the said superintendents and attorney shall deem reasonable, payable annually out of the annuity allowed to the said Indians: *And further*, The said superintendents shall supply the said town clerk with such books and papers as may be necessary for the execution of the duties enjoined on him by this act; and such clerk shall receive annually for his services, such sum as the said superintendent shall deem adequate.

§ 43. *And be it further enacted*, That the buildings erected in the villages of the Tuscarora and Seneca tribes of Indians, for public and religious worship, and for education, shall continue as such for the said purposes: *And further*, The said Senecas and the other Indians of the Six Nations, may pass and repass free of toll and ferriage, at all seasonable times of the

Marshals.

Accounts to be furnished to peace-makers.

Orphanage, &c.

Books and salary of town clerk.

Buildings for public worship.

Indians to travel free of toll and ferriage.

PART I.

day, on any turnpike road which shall have been established since the sixth day of April, one thousand eight hundred and three, or which may hereafter be established, leading from or through the town of Canandaigua to Buffalo creek or its vicinity, and over any toll bridge between those places, and also at the ferry across the Niagara river at or near Black Rock, or at such other place or places in its vicinity where any ferry shall have been established since the time aforesaid, or hereafter to be established.

[Section 44 repealed by Laws of 1841, ch. 234.]

[Section 45 temporary.]

Convey-
ances by
Indian
patentees.

§ 46. *And be it further enacted*, That whenever any legal conveyance shall be submitted to the surveyor general for his approbation, executed by any Indian patentee of lands granted for military services in the revolutionary war, or by the heirs of such patentee, it shall be his duty to ascertain that such conveyance has been obtained fairly and for a competent consideration, and that such consideration has been paid or secured to be paid to such grantors, their heirs, executors, administrators or assigns, before he shall endorse his approbation thereon in the manner required by law; but nothing contained in this section shall affect or prejudice conveyances made before the seventh day of March, one thousand eight hundred and nine.

1 H., 121; 17 W., 531; 5 W., 532; 15 J. R., 264.

[Section 47 was extinguished by Laws of 1839, ch. 40.]

[Section 48 temporary.]

[Section 49 confirms personal grants.]

[Sections 50, 51 temporary.]

Governor
may pur-
chase lands
of Indiana.

§ 52. *And be it further enacted*, That it shall and may be lawful for the governor for the time being, to make any contract and contracts with any nation or tribe of Indians within this state, for the purchase of all or any of their lands therein; and that the treasurer, on the warrant of the comptroller, shall pay such sums as may be necessary in the first instance to defray the expense of, and to carry into effect all and every treaty for the purchase of such lands or any part thereof.

Relative to
Shinecock
Indians.

§ 53. *And be it further enacted*, That it shall be lawful for the male Indians above the age of twenty-one years, belonging to the Shinecock tribe in Suffolk county, to meet together on the first Tuesday of April in every year, at the place for holding town meetings in the town of Southampton, and by plurality of voices annually to elect three persons belonging to the said tribe as trustees, who, by and with the consent of three justices of the peace residing next to the lands of the said tribe, are hereby authorised and empowered from time to time to lease out so much of the said lands as they shall judge proper for the benefit of the said tribe, and for any term not exceeding three years, and to lay out and appropriate such quantity of the said lands to each individual or family of the said tribe as they shall judge proper and necessary for his or their improvement, and also to order and direct

on what part of the said lands firewood and timber may be cut by the said tribe for their use; and it shall be the duty of the clerk of the said town annually to attend and preside at such meeting of the said Indians, and to enter in a book by him to be kept for that purpose, the names of the trustees to be chosen as aforesaid, and the proceedings of such trustees and justices; and if any person shall occupy or use any of the said lands without the consent of a majority of the said trustees, and of a majority of such justices first obtained and entered in the said book, such person shall forfeit the sum of five dollars for every acre so used or occupied; and if any person belonging to the said tribe shall cut any wood or timber on the said lands without such order and consent of the said trustees and justices first entered in the said book, such person shall forfeit the sum of ten dollars for each offence, which penalties shall be sued for and recovered by such justices in their own names, in any court having cognizance thereof, with costs of suit, for the use of the said tribe.

See Laws of 1859, ch. 46; 1816, ch. 133.

[Section 54, which provided for Peter Otsequette and his posterity, was extinguished in 1835.]

§ 55. *And be it further enacted*, That the heirs of each of the Indians to whom land has been granted by this state for military services, in the late war between the United States and Great Britain, shall be, and hereby are made capable of taking and holding any such lands by descent, in the same manner as if such heirs were citizens of this state at the death of his, her or their ancestors; and that every conveyance hereafter to be executed by such patentee, or his heirs, to any citizen of this state, for any such land, shall be valid, if executed with the approbation of the surveyor-general of this state, to be expressed by an endorsement on such conveyance, and signed by the said surveyor-general: *Provided*, That nothing in this act shall in any manner confirm any deed or conveyance heretofore executed by the patentee or his heirs: *Provided further*, That if any such land be now occupied or improved, the occupant, his or her heirs or assigns, shall be entitled to be paid for his, her or their improvements, in the manner mentioned in the second section of an act, entitled "An act concerning lands in the military tract," passed the eighth day of April, one thousand eight hundred and thirteen.

Indian patentees for military services.

CHAP. 114.

AN ACT regulating the payment of the compensation of the attorney of the Brothertown, Oneida and Stockbridge tribes of Indians.

PASSED April 9, 1816.

§ 1. *Be it enacted by the People of the State of New York, represented in Senate and Assembly,* That the sum of fifty dollars be paid to William Hotchkiss, attorney for the Brothertown, Oneida and Stockbridge Indians, by the treasurer of this state, on the warrant of the comptroller, being the balance due to him for two years' salary ending December last, by virtue of the act, entitled "An act relative to the different tribes and nations of Indians," passed April 10, 1813.

§ 2. *And be it further enacted,* That the treasurer, on the warrant of the comptroller, shall hereafter, annually, pay to the attorney of the said Indians, the sum of seventy-five dollars, in part of the salary allowed him by the act above mentioned; and that the remainder of his salary shall be paid in the manner in said act mentioned.

CHAP. 133.

AN ACT relating to the Shinecock tribe of Indians.

PASSED April 15, 1816.

Trustees to
be elected.

§ 1. *Be it enacted by the People of the State of New York, represented in Senate and Assembly,* That it shall be lawful for the male Indians, above the age of twenty-one years, belonging to the Shinecock tribe, in Suffolk county, to meet together on the first Tuesday in April, in every year, at the place for holding town meetings, in the town of Southampton, and by plurality of voices, annually to elect three persons, belonging to the said tribe, as trustees: and it shall be the duty of the clerk of the said town, to attend and preside at such meetings of the said Indians, and to enter in a book to be kept by him for that purpose, the names of the trustees to be chosen as aforesaid, and the proceedings of such trustees, and of the said trustees and the justices hereafter mentioned.

Lands to
be divided.

§ 2. *And be it further enacted,* That the said trustees are hereby authorised and empowered, from time to time, to lay out and appropriate such quantity of the lands of the said tribe, to each individual or family of the said tribe, as they shall judge proper and necessary for his or their improvement: *Provided,* That the whole quantity so laid out and appropriated, in any one year, shall not exceed one hundred and twenty-five acres: And the said trustees, by and with the

consent of three justices of the peace, residing in or near the town of Southampton, are hereby authorised and empowered, from time to time, to lease out so much of the said lands, as they shall think proper, for the benefit of the said tribe, and for any term not exceeding three years. And also to order and direct on what part of the said lands, fire-wood and timber may be cut by the said tribe for their use.

See Laws of 1859, ch. 46.

§ 3. *And be it further enacted*, That if any person not of the said tribe shall in any manner hire, use or occupy any of the said lands, which shall be so laid out and appropriated as aforesaid, such person shall forfeit the sum of twenty-five dollars for every acre so hired, used or occupied; and if any person shall occupy or use any of the said lands, without the consent of a majority of the said trustees, and of at least two of the said justices first obtained and entered in the said book, such person shall forfeit the sum of twenty-five dollars for every acre so used or occupied: And if any person belonging to the said tribe, shall cut any wood or timber on the said lands, without such order and consent of the said trustees and justices first entered in the said book, such person shall forfeit the sum of ten dollars for each offence; the one half of which penalties shall be to the use of the overseers of the poor of the town of Southampton, and the other half to the use of the party who will sue for the same, by action of debt, in any court having cognizance thereof.

Penalty for persons not of the tribe to hire lands.

CHAP. 143.

AN ACT concerning certain Indians residing within this state.

PASSED April 5, 1817.

§ 1. *Be it enacted by the People of the State of New York, represented in Senate and Assembly*, That it shall not be lawful for any white person, under any pretence, or on any account whatever, to receive from any Indian, residing on a tract of land belonging to or occupied by the Mohickonic or Stockbridge Indians, or on the reservation lands of the Oneida or Brothertown Indians, any article or articles whatsoever, by way of pawn or pledge; and that every person who shall receive such pawn or pledge, shall forfeit the sum of twenty dollars, to be recovered in an action of debt, in the name of the Indian from whom he shall have received such pawn or pledge, in any court having cognizance thereof, with costs: And that every such pledge or pawn, or the value thereof, shall also be recoverable, with costs, by the Indian from whom the same shall have been received, in an action of replevin or trover, at his election.

No pawn or pledge lawful.

CHAP. 152.

AN ACT to amend the act, entitled "An act for the relief of the settlers on lands belonging to the Stockbridge Indians."^o

PASSED April 5, 1817.

Attorney
may re-
move set-
tlers.

Superintendents
may
issue war-
rants.

Persons
complained
of may be
removed.

§ 1. *Be it enacted by the People of the State of New York, represented in Senate and Assembly,* That it shall be the duty of the attorney of the Stockbridge Indians, if he considers any person who now resides or shall hereafter come to reside on the lands of the said Indians, who is not entitled by law to settle on said lands, is likely to be injurious to the said Indians by corrupting their morals, or by injuring their lands or property, to notify such person in writing to remove from said lands; and in case such person shall neglect to remove for the space of ten days after receiving such notice, it shall and may be lawful for any one of the superintendents of the said Indians, on complaint of their attorney, to issue a summons commanding such person to appear before the superintendents of the said Stockbridge Indians, at such time and place as the superintendent who shall issue such summons, shall appoint, to show cause why he or she should not be removed from the lands of said Indians, which summons may be served by the sheriff or any constable of either of the counties of Oneida or Madison, by reading the same to the person to be summoned, and leaving a copy of said summons, if required, at least ten days before the time appointed in such summons, for his or her appearance before said superintendents, and said summons being returned duly served as aforesaid, it shall be the duty of the said superintendents, or a majority of them, to assemble for that purpose at the time and place mentioned in said summons, or at such other time and place to which said superintendents may adjourn the hearing of such complaint, not exceeding ten days thereafter, to examine into said complaint; and if the said superintendents, so assembled, shall find and adjudge such person so complained of, is at the time of such adjudication, resident on the lands of said Stockbridge Indians, and is likely to prove injurious to their morals or their property, and that he or she has no legal right to reside on said lands, it shall be the duty of the superintendents, so assumed, to order such person with his or her family to be removed from said lands; and they shall further order and adjudge that such person shall pay such sum as the said superintendents shall adjudge necessary to defray the expense of such proceedings; and said superintendents shall issue their warrant, under their hands and seals, directed to the sheriff or any constable of the counties of Oneida or Madison, commanding the officer to whom such warrant is directed, to remove the person so complained of,

and his or her family, if any he or she hath, from the lands of said Indians, and to distrain and sell the goods and chattels of such person, sufficient to raise the sum adjudged for the costs of such proceedings; and it shall be the duty of the said officers, to whom such warrant shall be directed and delivered, to execute the same without delay, and to make return thereof, with the costs, to said superintendents.

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Goods may
be sold.

§ 2. *And be it further enacted*, That the said superintendents, or any one of them, may issue a subpoena for witnesses to appear before them, on the trial of any complaint, triable by virtue of this act; and it shall be the duty of each and every person subpoenaed as a witness, to attend before said superintendents, and be sworn, and give evidence as to what he or they may know, respecting the complaint then on trial, before the said superintendents, which oath each and every of the superintendents are hereby authorized to administer; and it shall be the duty of each of the said superintendents to issue the like subpoena in favor of the person complained of if required so to do.

Witnesses
summoned.

§ 3. *And be it further enacted*, That the following costs, and no other, shall be allowed for executing the duties required by this act; for a summons, twelve and an half cents; for every order, one dollar; for a warrant, twenty-five cents; for a subpoena, for each witness, six cents; serving subpoena, on each witness, twelve and an half cents; each witness attending, twelve and an half cents; swearing each witness, six cents; for serving a summons, the same fees as are allowed to constables for serving a summons, by the act for the recovery of debts to the value of twenty-five dollars; and for serving a warrant, such sum as said superintendents shall adjudge to be reasonable.

Costs.

§ 4. *And be it further enacted*, That the superintendents of the Brothertown Indians, who now are and may hereafter be appointed, shall, during their continuance in office, be the superintendents of the Stockbridge Indians, for all the purposes mentioned in this act.

Superinten-
dents of
Stockbridge
and Bro-
thertown
Indians.

CHAP. 283.

AN ACT to amend an act, entitled "An act relative to district attorneys."

PASSED April 21, 1818.

§ 2. *And be it further enacted*, That it shall be the duty of the district attorney for the county of Franklin to perform all the duties now required by law of the district attorney of the fifth district, relative to the St. Regis Indians.

Duty of
district
attorney of
Franklin.

CHAP. 204.

AN ACT respecting intrusions on Indian lands

PASSED March 31, 1821.

Persons
prohibited
from set-
tling on In-
dian lands.Duty of
sheriff.

§ 1. *Be it enacted by the People of the State of New York, represented in Senate and Assembly,* That it shall be unlawful for any person or persons, other than Indians, to settle or reside upon any lands belonging to or occupied by any nation or tribe of Indians within this state, and that all leases, contracts and agreements, made by any Indians, whereby any person or persons, other than Indians, shall be permitted to reside upon such lands, shall be absolutely void; and if any person or persons shall settle or reside on any such lands, contrary to this act, it shall be the duty of any judge of any court of common pleas of the county within which such land shall be situated, on complaint made to him, and on due proof of the fact of such settlement or residence, to issue his warrant under his hand and seal, directed to the sheriff of such county, commanding him within ten days after the receipt thereof, to remove such person or persons, so settling or residing with his, her or their families, from such lands; and it shall be the duty of such sheriff, accordingly, within the time aforesaid, to remove such person or persons, and for that purpose he shall have and possess the same powers as in the execution of criminal process; and such judge, for issuing such warrant and taking the preliminary proof, shall be entitled to receive a fee of one dollar in each case; and such sheriff, for executing the said warrant, shall be allowed such compensation as the comptroller shall certify to be reasonable; which fees shall be paid by the treasurer, on the warrant of the comptroller, out of any moneys in the treasury not otherwise appropriated.

16 N. Y., 203; 7 N. Y., 428; 1 D., 617; 19 J. R., 127; 1 How. P. R., 186.

Penalty on
certain
offenders
returning,
&c.Duty of
sheriff.

§ 2. *And be it further enacted,* That if any person or persons, after being so removed as aforesaid, shall return to settle or reside upon any lands occupied by or belonging to any nation or tribe of Indians within this state, such person or persons so offending and being thereof convicted before any judge of the court of common pleas of the county where such lands are situated, upon the confession of the party offending, or proof of any witness or witnesses on oath, then the said judge, before whom such conviction shall be had, shall direct and send his warrant, under his hand and seal, to the sheriff of the said county, commanding him to arrest such person or persons forthwith, and to commit him or them to the common gaol of the said county, there to remain for the space of thirty days; and such sheriff shall accordingly arrest and commit such person or persons to the said common gaol for the term

of time aforesaid, there to remain, without bail and without being entitled to the liberties of the limits of the said gaol; and such judge shall cause such conviction to be drawn up and filed in the office of the clerk of the county; and no such conviction or adjudication shall be liable to be removed by certiorari or otherwise, but shall be deemed and taken to be final.

[Section 3 repeals § 11 of act of 1813.]

[Section 4 temporary.]

§ 5. *And be it further enacted*, That it shall be the duty of the respective district attorneys of the several counties of this state, in which any lands belonging to any Indian tribe shall be situated, to prosecute in the name of the people of this state, for any penalties that may be incurred under and by virtue of the act, entitled "An act to prevent trespasses on Indian lands within this state," passed April 2d, 1813; and one-half of all moneys collected for violations of the said act, shall be paid to the treasurer of such county, and the other half thereof shall be paid to the Indian tribe on whose lands the said trespasses shall be committed; and that so much of the second section of the said recited act as is contrary to the provisions of this section, be and the same is hereby repealed.

Duty of district attorneys.

§ 6. *And be it further enacted*, That it shall be the duty of the said district attorneys respectively, to make complaint of all intrusions upon Indian lands, forbidden by this act, and from time to time to make inquiries whether any persons other than Indians are settled upon such lands, and to cause them to be removed in the manner herein prescribed, and in case of their return, to complain to some judge of the county, that the provisions of this act may be carried into effect; and for their attendance before any such judge, on making such complaint, they shall respectively be allowed the same fees as for the trial of an indictment in the court of general sessions of the peace, to be paid in like manner as those fees are now paid by law.

Further duties of district attorneys.

CHAP. 40.

AN ACT for the relief of the Stockbridge Indians.

PASSED February 18, 1823.

WHEREAS, the Stockbridge Indians have represented by their petition, that moneys paid by the people of this state on their behalf, have not been properly applied, when placed in the hands of their peace makers for distribution, and that they are on that account liable to imposition: Therefore,

Preamble.

§ 1. *Be it enacted by the People of the State of New York, represented in Senate and Assembly*, That the amount directed to be paid by the treasurer, on the warrant of the comptroller, by the forty-ninth section of the act, entitled "An act relative to the different tribes and nations of Indians within this

Duty of comptroller.

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state," passed 10th April, 1813, shall be paid to the superintendents of the said Stockbridge Indians, to be by them applied to the purposes mentioned in said forty-ninth section, instead of paying the same to their schoolmaster, in the manner therein provided.

Moneys payable to the Stockbridge Indians.

§ 2. *And be it further enacted*, That all moneys due to the Stockbridge Indians by treaty or otherwise, shall be paid to the superintendents of the said Stockbridge Indians, to be by them applied on the order of the peace makers, chiefs and warriors of the said tribe, for their benefit, and to enable them to remove to Green Bay; and that the superintendents account with the comptroller annually, on or before the first of January in each year, for all moneys which shall come to their hands.

Persons required to be present at treaties, &c

§ 3. *And be it further enacted*, That in case any treaty shall hereafter be held and made with the said Indians by the people of this state, it shall be the duty of the said superintendents, some or one of them, to be present and attend at the making thereof, and to receive such sum or sums of money as shall be stipulated to be paid to them by such treaty; and in case of the non-attendance of such superintendent or superintendents, at the time of making any such treaty, it shall be lawful for the executive, or other agent or agents on the part of the people of this state, to pay any such moneys to the peace makers and such other of the said Indians as may be present at the making of such treaty, and as shall be properly authorised by the said Indians to consent and enter into the same: *Provided however*, That no moneys shall be paid to any superintendent or agents, unless good and ample security, if required, is given to the comptroller, for the faithful application of said moneys to the purposes mentioned in this act.

Proviso.

Agent to be appointed.

§ 4. *And be it further enacted*, That the said superintendents shall appoint an agent to reside among the said Indians, whose duty it shall be to give to the said superintendents information of all trespasses done on the lands of said Indians, and generally to perform such services for the benefit of said Indians, or as the said superintendents shall from time to time direct, who shall receive from them such compensation as they shall deem reasonable, not exceeding thirty dollars per annum, out of the funds in their hands belonging to said Indians.

CHAP. 205.

AN ACT to amend the act entitled "An act relative to the different tribes and nations of Indians in this state."

PASSED April 12, 1822.

Selling ardent spirits to

§ 1. *Be it enacted by the People of the State of New York, represented in Senate and Assembly*, That the provisions of the

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any Onon-
daga Indian
prohibited,
&c.

third section of the act entitled "An act relative to the different tribes and nations of Indians in this state," passed April 10, 1813, be and they are hereby extended to the Onondaga tribe of Indians, and that any person or persons who shall sell to any Indian of said tribe, or to any Indian residing with or visiting said tribe, any rum, brandy, gin, or other ardent spirits, within the county of Onondaga, shall be deemed guilty of a public offence, and be subject to the penalties provided in and by the said section, to be recovered and paid, in the manner therein prescribed.

CHAP. 177.

AN ACT to provide for the appointment of peace makers and town clerk for the Stockbridge Indians, and for other purposes.

PASSED April 7, 1824.

WHEREAS it appears by a petition from the Stockbridge Indians, that there has difficulty arisen in their nation, respecting their mode of appointing peace makers, on account of the mulattoes and negroes that have been adopted into their nation, and the Stockbridge Indians pray that a law may be passed, so as to prevent any further difficulty as to the mode of appointing peace makers and town clerk in their nation: Therefore,

§ 1. *Be it enacted by the People of the State of New York, represented in Senate and Assembly,* That it shall be lawful for the Stockbridge and Delaware Indians that have been adopted into the Stockbridge tribe, to meet in general council, and by a majority of votes given in such council, to appoint peace makers and town clerk; and such peace makers and town clerk shall hold their office for the term of one year.

§ 2. *And be it further enacted,* That it shall not be lawful for any negro or mulatto to meet or vote in any such council, after the passing of this law; and it shall be the duty of the town clerk of the Stockbridge Indians, to transmit the names of the peace makers and town clerk to the superintendents of Indian affairs, and it shall be the duty of the said superintendents to keep a record of the same.

CHAP. 257.

AN ACT to amend the act entitled "An act respecting intrusions on Indian lands," passed March 31, 1821.

PASSED April 20, 1825.

§ 1. *Be it enacted by the People of the State of New York, represented in Senate and Assembly,* That whenever the judges

Power of
judges of
county
courts.

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of the county courts of any county in this state, within which any reservation or tract of land occupied by any tribe or nation of Indians may be situate, or a majority of them, shall, on the request of any such tribe or nation of Indians, or the major part of them, grant a license in writing to any schoolmaster, teacher or family of teachers, to enter and to reside upon any such lands or reservation, and for that purpose to occupy so much land as the said judges shall in such license specify, not exceeding fifty acres; and whenever the said judges, or a majority of them, shall as aforesaid grant a license to any person to reside upon any such reservation, for the purpose of instructing the said Indians in agriculture, the mechanic arts, or to erect for them any mill or other machinery, or to attend and keep in repair any mill or other machinery, or to assist such Indians in the manufacture of salt, the person or persons to whom such license shall be granted, shall not be subject to the provisions contained in the act entitled "An act respecting intrusions on Indian lands," passed March 31, 1821: *Provided*, That the said judges, or a majority of them, may at any time in their discretion revoke any such license so granted by them as aforesaid; and it shall be their duty to revoke the same whenever it shall appear that any person to whom the same was granted has sold, given away, or in any way distributed any ardent spirits among the said Indians; and whenever such license shall be so revoked, the same shall cease to have any force or effect whatever; and it shall be the duty of the district attorney of the county wherein such reservation shall be situate, to proceed and cause the removal of such person or persons from such reservation, according to the provisions of the act aforesaid.

16 N. Y., 203; 1 D., 617; 1 How. P. R., 186

CHAP. 150.

AN ACT to amend the act entitled "An act relative to the different tribes and nations of Indians in this state," passed April 10, 1813.

PASSED April 11, 1826.

Third section of former act extended to the Seneca and St. Regis Indians.

Selling ardent spirits to them declared a public offence.

§ 1. *Be it enacted by the People of the State of New York, represented in Senate and Assembly*, That the provisions of the third section of the act entitled "An act relative to the different tribes and nations of Indians in this state," passed April tenth, eighteen hundred and thirteen, so far as they may be applicable, be, and they are hereby extended to the Seneca and St. Regis tribes of Indians, and that any person or persons who shall sell to any Indian of said tribes, or to any Indian residing with or visiting said tribes, any rum, brandy, gin or other ardent spirits, within the county of Cattaraugus

or Franklin, shall be deemed guilty of a public offence, and be subject to the penalties provided in and by the said section, to be recovered and paid in the manner therein prescribed.

CHAP. 70.

AN ACT to amend an act, entitled "An act for the relief of the Stockbridge Indians," passed February eighteenth, eighteen hundred and twenty-three.

PASSED March 8, 1830.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. The superintendents of the Stockbridge Indians shall hereafter account with the comptroller for all moneys which shall come into their hands under the provisions of the act hereby amended, on or before the first day of December in each year; and so much of the act hereby amended as is inconsistent with this act, is hereby repealed.

Superinten-
dent to ac-
count annu-
ally.

CHAP. 289.

AN ACT concerning the First Christian Party of Oneida Indians.

PASSED May 5, 1834.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. It shall be the duty of the treasurer to pay annually, upon the warrant of the comptroller, to be drawn for that purpose, to that part of the First Christian Party of Oneida Indians residing in this state, in addition to the annuity now payable to them, the annual interest of the sum which, at the time such annuity becomes payable, may remain owing to said party, out of the fund retained and set apart by law to defray the expenses of the migration of said party to Green Bay. In making the payment under this act, interest shall be computed equitably, and allowed from the time of the release of the lands of the Indians to the state.

Annual pay-
ments.

CHAP. 110.

AN ACT to prohibit the sale of ardent spirits to the St. Regis Indians.

PASSED April 20, 1835.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Penalty.

§ 1. If any person shall knowingly sell or furnish to any Indian belonging to or residing with the St. Regis tribe, any rum, brandy, gin, whiskey or other spirituous liquor, within the counties of Franklin or St. Lawrence, such person shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be fined, at the discretion of the court, not exceeding twenty-five dollars for one offence, or may be imprisoned not exceeding thirty days, and shall also forfeit for every such offence the sum of five dollars, to be recovered with costs in an action of debt by any person who will sue for the same, one-half of which forfeiture to be paid to the prosecutor, and the residue to the commissioners of common schools of the town in which such money shall be had, for the use of the common schools in such town: and that on the recovery of such forfeiture, the offender shall not be liable to any other or further prosecution for the same offence.

CHAP. 316.

AN ACT authorizing the construction of railroads upon Indian lands.

PASSED May 12, 1836.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Contracts,
how to be
made.

§ 1. It shall be lawful for any railroad company that has been, or may hereafter be chartered by the legislature of this state, to contract with the chiefs of any nation of Indians, over whose lands it may be necessary to construct such railroad, for the right to make such road upon such lands; but no such contract shall vest in such railroad company the fee to such lands, nor the right to occupy the same for any purposes other than what may be necessary for the construction, occupancy and maintenance of such railroad.

And ratified.

§ 2. No contract made with the chiefs of any nation of Indians, for the purposes mentioned in the first section of this act, shall be valid or effectual, until the same shall be ratified by the court of common pleas of the county where such lands may be situated.

CHAP. 58.

AN ACT relating to the Oneida tribe of Indians.

PASSED March 8, 1839.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. The commissioners of the land office, or a majority of them, are hereby clothed with the following powers and duties:

1. To direct the payment in their discretion to the Oneida tribe of Indians, or any party of them recognized as such party by the laws of this state, of the amount for which all lands purchased by this state, since the eleventh day of February, one thousand eight hundred and twenty-nine, of said Indians, or any party of them, were sold by this state, deducting therefor all expenses of survey and sale of said lands, and all moneys heretofore paid said Indians, or any party of them, in consideration of such purchase, or in any manner invested for the benefit of said Indians, or any party of them:

Commissioners of the land office.

May direct lands purchased since 1829 to be paid for.

2. To direct the payment to said Indians, or any party or portion of them, of the principal of the annuities or such portion thereof as the said commissioners of the land office, or a majority of them may from time to time deem proper, remaining under the control of this state, for the benefit of said Indians, or any party or portion of them:

To direct principal of annuities to be paid.

3. To purchase of said Indians, or any party or portion thereof, their lands, or any part thereof, situate in the counties of Oneida and Madison, from time to time as the commissioners, or a majority of them, may deem proper, and on such purchase to pay such Indians the full value of such lands to be purchased, or what such lands shall sell for by the state, deducting all expenses of survey and sale thereof:

To purchase lands of Indians.

4. To make such treaties, contracts, and arrangements with the said Indians, or any party or portion of them, in relation to the lands of the said Indians in this state, or any moneys belonging to them under the control of this state, as the said commissioners of the land office, or a majority of them may deem just and proper.

To make treaties, &c.

5. To hear and determine all questions which may arise in relation to any moneys under the control of this state, belonging to said Indians, or any party or portion of them, and all questions which may arise between the various parties of the said Indians, in relation to any of their lands in this state, or the avails thereof.

To hear and determine questions.

§ 2. All moneys directed to be paid said Indians, or any party or portion of them, by virtue of this act, shall be paid by the treasurer of this state, upon the warrant of the comptroller, to said Indians, or such party or portion of them as

Moneys how to be paid.

PART I.

shall be justly entitled thereto, in manner as now provided for by law.

Acts to be approved by the governor.

§ 3. No act of the commissioners of the land office, or a majority of them, to be done under and by virtue of the first section of this act, shall have any force or effect until the same shall be approved by the governor of this state.

Effect of such acts.

§ 4. The proceedings of the commissioners of the land office, or a majority of them, under and by virtue of this act when approved by the governor as aforesaid, shall have the same force and effect as an act of the legislature, upon the parties concerned therein.

CHAP. 143.

AN ACT to authorize the trustees of the St. Regis Indians to lease their lands.

PASSED April 27, 1841.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Leases may be given for 21 years.

§ 1. The trustees of the St. Regis Indians, duly elected at a regular meeting of the tribe, shall have power, with the advice and consent of the agent of this state for the payment of their annuities, or of the district attorney of the county of Franklin, to make and execute to white persons, valid leases of any part or parts of their unoccupied lands within this state, for any term not exceeding twenty-one years, for such rents and upon such conditions as may be agreed on, with the advice and consent aforesaid, between the trustees and the person or persons proposing to lease the said lands or any part thereof; the rents of the said lands to be applied by the said trustees to the general benefit of the tribe.

See Laws of 1859, ch. 364.

Form of lease to be prepared.

§ 2. The district attorney of the county of Franklin shall prepare the form of a lease to be used for the purpose mentioned in the preceding section of this act, and no such lease shall be of any effect unless the written consent of the said district attorney or Indian agent to its execution shall be subjoined thereto or endorsed thereon.

Fees.

§ 3. The district attorney or Indian agent, who may prepare any such lease, attend the execution thereof and assent to the same, may receive from the said trustees, for each lease so executed and approved, the sum of three dollars and no more.

CHAP. 234.

AN ACT in relation to certain tribes of Indians.

PASSED May 25, 1841.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. The commissioners of the land office are hereby clothed with the following powers and duties:

Payments to be made to Caughnawaga and St. Regis Indians.

1. To direct the payment in their discretion to the Caughnawaga and St. Regis tribes, representing the seven nations of Canada Indians, or any part or portion of them, of the principal of the annuities, or such portion thereof as the said commissioners of the land office may from time to time deem proper, remaining under the control of this state, for the benefit of said Indians or any part or portion of them.

2. To direct the payment of such proportion of the principal of the annuity belonging to the Brothertown tribe of Indians, as that portion of said tribe are entitled to receive, who have removed to Brown county, in the territory of Wisconsin, deducting therefrom such sum, if any, as may appear to have been heretofore paid to them over and above their just proportion of the annuities payable to said tribe, such payment to be made to the person or persons authorized to receive the same.

To Brothertown Indians.

3. To direct the payment of the principal of the annuity due to the Cayuga chief, Fish Carrier.

To Fish Carrier.

[Extinguished August 2, 1841.]

4. To hear and determine all questions which may arise in relation to moneys under the control of this state, belonging to any Indian tribe or nation, or individual Indian, or his descendants, or any part or portion of them, and all questions which may arise between the various parties of such tribe or nation in relation to any of their lands in this state, or the avails thereof. And,

To hear and determine questions arising in relation to Indians.

5. To make such treaties, contracts and arrangements with any tribe or nation of Indians, or with any party or portion of them, or with any individual Indian or Indians who have any claim upon any lands in this state, or any moneys belonging to them under the control of this state, or for the purchase of any portion of such lands as the said commissioners may deem just and proper, or in relation to the expenses of laying out and keeping in repair any public road passing through any portion of the lands occupied by said Indians.

To make treaties with Indians.

§ 2. All moneys directed to be paid said Indians, or any part or portion of them by virtue of this act, shall be paid by the treasurer of this state upon the warrant of the comptroller, to said Indians, or such part or portion of them as shall be justly entitled thereto, in manner as now provided for by law.

Moneys how to be paid to Indians.

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Acts done under first section to be approved by governor.

Superintendent of Brothertown tribe.

Office of attorney abolished.

Salary of attorney of Oneida Indians.

Repeal, and \$50 to be applied to support a school.

Actions for trespass on Indian lands how to be prosecuted.

Security for costs where filed.

Common schools to be established on territory of Onondaga Indians.

§ 3. No act of the commissioners of the land office to be done under and by virtue of the first section of this act, shall have any force or effect until the same shall be approved by the governor of this state.

§ 4. There shall hereafter be appointed only one superintendent of the Brothertown tribe of Indians, who shall possess all the powers and be subject to all the obligations and duties conferred and imposed by law upon the superintendents of the said tribe.

§ 5. The office of attorney to the Brothertown and Stockbridge tribes of Indians is hereby abolished.

§ 6. The attorney for the Oneida Indians shall receive as a compensation for his services the yearly salary of one hundred dollars, to be paid by the treasurer out of the annuity payable by this state to the said tribe, in lieu of all other compensation heretofore provided.

§ 7. The forty-fourth section of the act entitled "An act relative to the different tribes and nations of Indians within this state," passed April 10, 1813, is hereby repealed, and the sum of fifty dollars therein directed to be paid to the agent of the Onondaga tribe of Indians, shall hereafter be paid and applied for the support of a school among the said Indians as hereinafter provided.

§ 8. Actions of trespass may be brought in the name of the people of this state, for any trespass committed by any person or persons other than Indians, on land possessed by any Indian or Indians, by the district attorney of the county in which such land is situated, upon security for the payment of the costs of such suit being given to his satisfaction, and the like damages shall be recovered as are now provided by law in cases of wilful trespass, and after deducting expenses, such damages shall be paid to and distributed among the Indians occupying such lands; and any such suit may in like manner be brought by any three of the chiefs of the said tribe, for its benefit, with the approbation in writing of the supervisor of the town where such land is situated, or of any judge of the county courts, the security for costs in the latter case being given and approved by such supervisor or judge, at any time before or on the return of the first process in such suit, and the like damages as in cases of wilful trespass shall be recovered in such action.

§ 9. The security for costs mentioned in the last preceding section in cases where the suit is brought before a justice of the peace, shall be filed with him, and in other cases shall be filed in the office of the county clerk, and the defendant in any such suit to whom any costs may be awarded, may maintain an action on such security for the recovery of such costs.

§ 10. The commissioners of common schools of the town or towns in which the Indians belonging to the Onondaga tribe may reside, shall set off and erect the territory occupied by such Indians into a separate school district, and shall annually

appoint three of the chiefs or head men, to be trustees of such district, and all the provisions of law respecting other school districts shall apply to the district so organized, and to its officers, so far as the same are consistent with the civil condition of said tribe of Indians, except in relation to the election of trustees, and except that a collector and clerk shall be appointed by the trustees, and the amount heretofore directed to be paid to the agent of said Indians, shall be paid to the trustees of such district, and be applied by them to the payment of teachers' wages in such district.

CHAP. 185.

AN ACT relative to the Oneida Indians.

PASSED April 18, 1843.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. The Oneida Indians owning lands in the counties of Oneida and Madison, are hereby authorized to hold their lands in severalty, in conformity to the surveys, partitions and schedules annexed to and accompanying the treaties made with the said Indians, by the people of this state, in the year one thousand eight hundred and forty-two, and now on file in the office of the secretary of state; and the lots so partitioned and designated by said survey to the said Indians, shall be deemed to be in lieu of all claims and interest of the said Indians, in and to all other lands and property in the Oneida Reservation, except the mission lot on lot one, and the church lot on lot two, of the Oneida Purchase, of May 23d, 1842, which are to be held by the said Indians as tenants in common.

Indians
owning
lands to
hold the
same in
severalty.

§ 2. The governor shall appoint a superintendent of the Oneida Indians, who shall hold his office for the term of two years, subject to be removed for cause.

Superinten-
dent to be
appointed.

§ 3. It shall be lawful for the said superintendent of the Oneida Indians, upon application made to him for that purpose, by any Indians or Indian owning lands as aforesaid, to sell and convey such lands to the person or persons so applying, provided the price agreed upon between said Indians or Indian and the said person or persons so applying to purchase said lands, shall, in the opinion of the said superintendent, be not less than a fair and reasonable price therefor: And the said superintendent shall receive, at the time of making such sale, not less than one-fourth part of the purchase money in hand, and shall secure the residue by bond and mortgage, payable within four years from the date thereof, with annual interest, to the said superintendent and his successors in office, in trust for the said Indians respectively. A deed of an Indian shall be valid to convey the title of himself, his wife and

Indians
may sell
and convey
lands.

PART I.

minor children; and every deed executed by virtue of this act, shall be acknowledged by the grantor before the first judge of Madison county, and the consent of the superintendent shall be endorsed thereon; and, when so executed and acknowledged and certified, shall be recorded in the county in which said land shall lie, with the same effect as other deeds.

Superintendent to keep account of debt and credit with Indians.

§ 4. The said superintendent shall keep a book, in which he shall open and keep a full account of debt and credit with each Indian for whom he acts and for whom he shall receive any money by virtue of this act, which book shall at all times be open for inspection to all persons; and he shall pay over all money as it shall, from time to time, come to his hands, to the Indian or Indians to whom it may rightfully belong, on demand, deducting therefrom his reasonable charges.

His power to sell and convey lands by consent of Indians.

§ 5. The said superintendent shall, with the consent of a majority of the chiefs and head men of the said Indians, sell and convey the above mentioned lots of land, held according to Indian usages, and sanctioned by treaties with them on the part of this state, as the common property of all the Oneidas who did not cede their lands to the people of the state previous to the treaty made with them, March 8th, 1841, for a fair price, unto any purchaser or purchasers, by requiring from them cash payments: And the conveyances shall be made, executed and acknowledged by the said superintendent; and the consent of the chiefs and head men in council shall also be acknowledged in the presence of an officer duly qualified to take acknowledgments of deeds; and such acknowledgments shall be endorsed on such deeds, in the like manner and to the same effect as conveyances mentioned in the third section of this act; and the money arising from the sale of said common lands, after deducting the reasonable expenses incurred in the survey, description and the partition of all lands which are the subject of this act, and of all the expenses in the negotiation and conclusion of the administration of their public affairs, shall be paid by him to the said chiefs and head men.

Effect of such deeds.

§ 6. The deeds and conveyances made as aforesaid, shall convey all the right, title and interest of the said Indians or Indian, whose lands shall have been conveyed as aforesaid, of, in and to the same, and shall vest in the purchaser or purchasers, his or their heirs or assigns forever, an absolute estate of inheritance in fee simple.

Superintendent to give bond with sureties.

§ 7. Before the said superintendent shall proceed to execute the trust reposed in him by this act, he shall, with two good and sufficient sureties to be approved by the first judge of Madison county, execute a bond to the people of this state, in the sum of five thousand dollars, conditioned for the faithful performance of the trust reposed in him by this act; which said bond shall be filed in the office of the comptroller of this state.

§ 8. The said superintendent shall, on the first Monday of February in each and every year, report to the comptroller of this state, his proceedings under and by virtue of this act, stating his account with each Indian, required to be kept as above.

CH. XXVI.
To report
to comp-
troller.

CHAP. 228.

AN ACT for the appointment of an agent of the Onondaga tribe of Indians.

PASSED April 18, 1843.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. There shall be appointed annually by the governor, by and with the advice and consent of the senate, an agent of the Onondaga tribe of Indians, who shall reside near said tribe, and whose duty it shall be to see that the rights and interests of said tribe are duly protected, and generally to perform such duties in relation to said tribe of Indians as the governor from time to time shall direct.

Agent of
Onondaga
tribe; his
duties.

§ 2. Said agent shall be paid out of any moneys of this state applicable to such purposes, an annual salary of fifty dollars.

Salary.

CHAP. 150.

AN ACT for the protection and improvement of the Seneca Indians, residing on the Cattaraugus and Allegany reservations in this state.

PASSED May 8, 1845.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. The Seneca Indians residing on the Allegany and Cattaraugus reservations in this state, shall be deemed to hold and possess the said reservations as a distinct community, and in and by the name of "The Seneca Nation of Indians," may prosecute and maintain in all courts of law and equity in this state, any action, suit or proceeding which may be necessary or proper to protect the rights and interests of the said Indians and of the said nation, in and to the said reservations, and in and to the reservation called the "oil spring reservation," and every part thereof, and especially may maintain any action of ejectment to recover the possession of any part of the said reservations unlawfully withheld from them, and any action of trespass or on the case, for any injury to the soil of the said reservations, or for cutting down

Seneca In-
dians to
hold certain
reserva-
tions as a
distinct
community,
&c.

PART I.

or removing, or converting any timber or wood growing or being thereon, or any action of replevin for any timber or wood removed therefrom, and may maintain any action or suit as aforesaid, for the recovery of any damage for any injury to the common property or rights of the said Indians, or for the recovery of any sum of money, property or effects, due or to become due, or belonging, or in any way appertaining to the said Indians in common, or to the said Seneca nation; and where such injury has been heretofore sustained, or any such damages have heretofore been suffered by the said Indians in common, or as a nation, actions therefor, and to recover damages for such wrongs may likewise be brought and maintained as herein provided, in the same manner and within the same time, as if brought by citizens of this state in relation to their private individual property and rights; and in every such suit, action or proceeding in relation to lands or real estate, situated within the said reservations, the said Seneca nation may allege a seisin in fee, and every recovery in such action, shall be as and for, and in reference to a fee; but neither such recovery or anything herein contained shall enlarge or in any way affect the right, title or interest of the said Seneca nation, or of the said Indians in and to the said reservations, as between them and the grantees or assignees of the pre-emption right of the said reservations under the grants of the state of Massachusetts. And no such action shall be defeated or barred on the ground that any land in relation to which such action is brought, or from which any timber or wood, logs or other property may have been removed or taken, and which may be the subject of any such suit, was in the possession of any individual Indian, but the occupancy of any part of the said reservations by any individual Indian, shall be deemed to have been, and to be the possession of the said Seneca nation; nor shall any license, consent, lease, agreement or any interest whatever, made or given by any individual Indian or Indians, be received in evidence in any such action in bar, defence or mitigation of damages, and when it shall be necessary to bring any such suit before a justice of the peace, the same may be brought and maintained before any such justice, residing in the county where the defendant may be found, whether the cause of action arise in such county or not.

An attorney
of the said
Indians to
be appointed.

His salary
and powers.

§ 2. The governor shall nominate, and by and with the consent of the senate, appoint some discreet and proper person, who shall have been a counsellor in the supreme court of this state for three years or more, to be the attorney of the Seneca nation of Indians, who shall hold his office for the term of three years, unless sooner removed by the senate, on the recommendation of the governor. He shall receive a salary of one hundred and fifty dollars annually, to be paid by the treasurer on the warrant of the comptroller, out of any moneys in the treasury not otherwise appropriated. He shall

from time to time advise the said Indians respecting controversies between themselves, and between them or any of them, and any other person; he shall prosecute and maintain all such actions, suits and proceedings for them or any of them, as he may find necessary and proper; and it shall be his duty on the written complaint of a majority of the chiefs of the reservation on which a trespass is alleged to have been committed, of any trespass having been committed on the lands in the said reservations, or of any timber, wood, or logs having been cut or carried away, or converted by any person to his own use, immediately to commence the proper suits for the recovery of such property, or of damages for any such injury. He shall also defend all actions brought against the Indians or any of them by white persons, and shall at all times when requested by them, or any chief, advise them in relation to their affairs. In case it shall be necessary to execute any bond for the prosecution or maintenance of any suit or proceeding in behalf of the said Indians or any of them, or for the defense of any suit or proceeding against them, the said attorney may execute the same in the name and behalf of the said Seneca nation, who shall be bound thereby in the same manner as any citizen may be bound by his lawful agent and attorney in fact; and in case any costs shall be recovered in any action instituted by the said attorney or defended by him against the said Seneca nation, no execution shall be issued for the collection of the same, but the same shall be paid by the treasurer, on the warrant of the comptroller, out of any annuity or interest money payable by this state to the Seneca Indians, upon producing to the comptroller a certificate of the said attorney of such recovery, and a duly certified transcript of the judgment or of the docket thereof, awarding such costs. All sums recovered in any action brought by the said attorney, after deducting such costs and expenses as shall be certified by the circuit judge, or the vice-chancellor of the eighth circuit to be reasonable and proper, shall be paid over to the treasurer of the Seneca nation of Indians, if there be one, and if there be none, then to such person as shall be appointed to receive the same by a majority of the chiefs of the said Indians in full council assembled, such appointment to be certified by the United States agent for the said Indians, if there be one. And the said sums so paid over shall be applied to the benefit of the said Indians as shall be directed by a majority of their chiefs in full council assembled, except that no part of any sum recovered in any such suit shall be paid to or in any way applied for the benefit of any Indian, who shall have been examined as a witness in such suit on behalf of the Seneca nation. And in every suit or proceeding authorized by this act, any individual Indian of the said Seneca nation, may if otherwise competent, be received and examined as a witness

PART I.

on behalf of the Seneca nation, notwithstanding his being a member of the said nation.

See Laws of 1847, ch. 365.

Penalty for
selling li-
quor to In-
dians.

§ 3. Every person who shall sell or give to any Indian of the said Seneca nation any spirituous liquor or any intoxicating drink, shall be deemed guilty of a misdemeanor, and on conviction shall be punished by a fine of not less than twenty-five dollars, and not more than fifty dollars, or by imprisonment in the county jail for not more than thirty days, or by both such fine and imprisonment.

Pawns or
pledges for
liquor pro-
hibited.

§ 4. Every person who shall receive from any Indian of the said Seneca nation, either absolutely in payment or exchange, or in pawn or pledge for the payment in whole or in part, for any spirituous liquor or intoxicating drink, sold or delivered, or to be sold or delivered to such Indian or to any other Indian of the said nation, any blanket, wearing apparel, implement or other goods or chattels, shall forfeit ten times the value of the article so received, to be sued for and recovered with costs, by the attorney of the said Seneca nation and in their name, and the amount recovered and collected shall be paid over as hereinbefore directed in respect to sums recovered for the said Seneca nation, and for their benefit; and any Indian of the said Seneca nation shall be a competent witness to prove the receipt of such goods or chattels, and shall also be competent to prove the sale or gift of any intoxicating drink to any Indian of the said nation. And any article or property, sold, exchanged or pawned or pledged as aforesaid, for spirituous liquor or any intoxicating drink, may be reclaimed and recovered by the Indian so selling or pledging the same, from the person to whom the same shall have been sold or pledged, or from any other person to whom the same may have been delivered, assigned, sold or transferred, and for the recovery of the same such Indian may maintain an action in any court having cognizance thereof; and in case such action shall not be brought or commenced within twenty days from the sale or pledge of such article or property, then it shall be lawful for the peace-makers of the reservation to which such Indian belonged, if any such peace-maker shall be chosen according to the provisions of this act, to demand, sue for and recover the article or property so sold or pledged, in any court having cognizance thereof, in and by their name of office; in which action the Indian who made such sale or pledge shall be a competent witness for the plaintiffs.

[§ 5 repealed by Laws of 1847, ch. 365.]

The peace-
makers
may call
special
meetings.

§ 6. The peace makers of the two reservations, or a majority of them, may call special meetings of the chiefs of the said Seneca nation, by giving at least ten days notice to each chief, or to some member of his family, of the time and place of such meeting; and the said chiefs, at any annual or special meeting, may determine on the laying out of their lands for

separate cultivation, improvement or occupancy, by any Indian and his family, and the quantity to each; and may make by-laws for laying out roads and highways, and making the same; for regulating and protecting or improving their common lands, for regulating fences and preventing trespasses by cattle or otherwise; and may provide a penalty, not exceeding five dollars, for violating or disobeying any such regulation or by-laws; and when any land shall be set apart for any Indian or family, the peace makers of the reservation shall lay out the same as shall have been directed, or in case specific instructions have not been given, as they shall judge reasonable and proper; and the said parcel shall be marked out and described by them, and the description thereof in writing shall be entered in a book by the said peace makers, and every parcel so allotted shall remain in the Indian to whom the same was assigned, and his legal representatives, but without the power of alienating or in any way disposing of the same except to some other Indian of the said nation, and when any such sale or disposition shall be made, the same shall be reported to the peace makers of the reservation and by them entered in the said book. The said chiefs at any such meeting may admit any Indian of any other tribe or nation to become an inhabitant of their reservation and to enjoy the same privileges with them. The peace makers shall lay out roads and highways as directed at such meetings, and from time to time direct the inhabitants of their reservation to work the same, so many days as shall have been directed at any such annual or special meeting; or in case no apportionment of highway labor upon the inhabitants of any reservation shall have been made at such meeting, then the same shall be made by the peace makers thereof according to the ability of such inhabitants; suits for penalties for disobeying or violating any regulation or by-law of any annual or special meeting made in pursuance of this act, may be brought by any Indian of the said nation before the peace makers of the reservation in which the offender may be, and they or a majority of them shall hear and determine the same as in other cases; the sums recovered and collected in any such suit, shall be paid over and applied as may be directed at any annual or special meeting aforesaid.

§ 7. In case any dispute shall arise at any annual or special meeting aforesaid, as to any Indian being a chief of said nation, the same shall be determined by the vote of a majority of those present, whose title as chiefs shall not be questioned by any parties to such dispute. The chiefs at any meeting may provide a compensation for the clerk not exceeding one hundred dollars per year, to be paid out of their national funds. The clerk shall enter in his book a correct list of the chiefs of the said Seneca nation, under the direction of the existing chiefs, or a majority of them, and shall enter in such book from time to time, the names of those who shall be ap-

Disputes as to who are chiefs how settled.

PART I.

pointed chiefs, and shall erase the names of such as shall be dismissed, and in case of any dispute as to any person being a chief, the same shall be determined in the manner hereinbefore provided, and such entries shall be conclusive evidence of the fact of any Indian being a chief.

See Laws of 1847, ch. 365.

Trespassers
how re-
moved.

§ 8. A warrant to remove any trespassers or intruders upon any lands in the said reservations, and any warrant to commit any person for returning to any such lands after being removed, may be issued as now provided by law, by any circuit judge, or by any supreme court commissioner residing in any county adjoining the said reservation.

CHAP. 309.

AN ACT to provide for the opening and improving roads through the Onondaga Indian Reservation.

PASSED May 14, 1845.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Powers of
commis-
sioners of
highways.

§ 1. The commissioners of highways of the towns in the county of Onondaga, in which the Indian reservation lays, shall have the same power and jurisdiction over the reservation in their respective towns, to improve highways already laid out as is conferred upon commissioners of highways generally, by part one, chapter sixteen, article four, of the Revised Statutes, except that all decisions of the commissioners shall be served in writing upon the agent of said Indians, and said commissioners shall allow the said agent sixty days to appeal, as provided in the second section of this act.

Right of ap-
peal.

§ 2. The Indians, through their agent, shall have the right of appeal from the decisions of said commissioners to the judges of the court of common pleas, who shall have full and entire jurisdiction over the whole subject, providing such appeal shall be made within sixty days from the service of notice of the decision of the commissioners upon their agent.

CHAP. 114.

AN ACT to provide for the education of the children of the Onondaga Indians in the county of Onondaga, and the children of the other Indians residing in this state.

PASSED April 30, 1846.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Onondaga
Indians.

§ 1. The agent of the Onondaga Indians in the county of Onondaga, appointed under the authority of this state, is

hereby authorized, with the consent of the chiefs of the said tribe of Onondaga Indians, to cause to be built and furnished a good and sufficient school-house on the Onondaga reservation, at an expense not exceeding three hundred dollars, for the accommodation of the Indian children residing on such reservation; and to organize a school therein, and the sum of three hundred dollars is hereby appropriated for the payment of the expense of erecting and furnishing said school-house.

§ 2. The sum of two hundred and fifty dollars annually is hereby appropriated for the term of five years, for the payment of the wages of a teacher or teachers, and of the other expenses of maintaining such school.

Annual appropriation.

[Sections 3 and 4 repealed by Laws of 1847, ch. 238.]

§ 5. The sums appropriated by the first and second sections of this act shall be paid from time to time to the said agent of the Onondaga Indians on his giving to the people of this state and filing with the state superintendent of common schools, a bond with satisfactory sureties, to be approved by such superintendent, conditioned for the proper and faithful expenditure of all moneys paid to him, or which shall come into his hands by virtue of this act, and for the rendering to such superintendent annually, in the month of October, a just and true account of all his receipts and expenditures under the provisions of this act.

Amounts appropriated by first and second sections how paid.

[Section 6 repealed by Laws of 1847, ch. 238.]

[Section 7 temporary.]

§ 8. The sums hereby appropriated shall be paid out of the income of the United States deposit fund; and the last two of the several annual payments herein provided for, shall not be paid for the Indians residing on either of said reservations, unless the Indians on such reservation shall, before such payment in each year, pay into the hands of the persons authorized to receive and expend the moneys appropriated by this act, at least twenty per cent of the sum authorized to be paid annually for the maintenance of the school on such reservation; nor shall any of the said annual payments except the first, be made unless the state superintendent of common schools shall have satisfactory evidence that a school has been kept in said school house for the term of at least six months during the preceding year; such twenty per cent shall be expended by such commissioners for the support and maintenance of the school or schools on the reservation, occupied by the Indians paying the same.

Payments to be made from U. S. deposit fund.

§ 9. The schools organized and established by virtue of this act, shall be subject to the visitation and inspection of the superintendent of common schools of the town and county where the same shall be situated.

Schools subject to visitation.

CHAP. 278.

AN ACT in relation to the Indians residing on the Cattaraugus and Allegany reservations.

PASSED May 13, 1846.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Selling
liquor pro-
hibited.

§ 1. Every person who shall sell or give to any Indian residing on the Cattaraugus or Allegany reservations, any spirituous liquor or any intoxicating drink, shall be deemed guilty of a misdemeanor, and on conviction shall be punished by a fine not less than twenty-five dollars, and not more than fifty dollars, or by imprisonment in the county jail for not more than thirty days, or by both such fine and imprisonment.

CHAP. 238.

AN ACT making appropriations for building and furnishing school-houses, and providing for the education of the children of Indians, residing on the Cattaraugus and Allegany reservations.

PASSED May 7, 1847; "three-fifths being present."

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

[Sections 1 and 2 temporary.]

To be paid
from in-
come of
U. S. de-
posit fund.

§ 3. The sums appropriated by this act, and all appropriations made, or that hereafter may be made for the education of the children of Indians residing on the Cattaraugus and Allegany reservations, shall be paid out of the income of the United States deposit fund, to Chester Howe, or his successor, on his executing to the people of this state, and filing with the superintendent of common schools, a bond in the penalty of two thousand dollars, with such sureties as shall be approved by the said superintendent, condition for the faithful expenditure of, and accounting for all moneys which shall be received by him under this act; and he shall, annually, in the month of October, render an account to the comptroller, of all receipts and expenditures by him.

Saving
clause.

§ 4. The appropriations made for the education of Indian children residing on said reservations, for eighteen hundred and forty-eight, and thereafter, shall not be expended by the said commissioner, until the chiefs of the Indians residing on the said reservations shall pay to the said commissioner, twenty per cent of the sums so appropriated, respectively, in each year, to be applied by him to the maintenance of the

said schools; nor shall the sums so appropriated be paid to the said commissioner unless the superintendent of common schools shall have satisfactory evidence that schools have been kept on the said reservations, respectively, for at least six months during the preceding year.

§ 5. In case the said Chester Howe shall decline to accept the trust hereby conferred, or to execute the bond hereby required, or in case of his death, inability or resignation, the comptroller of this state may appoint some fit and proper person or persons to supply such vacancy, who, upon executing the bond herein required, shall be entitled to receive and expend the moneys hereby appropriated, and shall account for the same in the manner and upon the conditions herein provided.

Provision
in case C.
Howe de-
clines, &c.

§ 6. The schools established under this act, shall be subject to the visitation and inspection of the county and town superintendents of common schools, of the county and town in which they shall be kept.

Schools by
whom to be
visited.

§ 7. The third, fourth and sixth sections of the act, entitled "An act to provide for the education of the children of the Onondaga Indians, in the county of Onondaga, and the children of the other Indians residing in this state," passed April 30, 1846, are hereby repealed.

Repeal.

CHAP. 365.

AN ACT to amend the act for the protection and improvement of the Seneca Indians residing on the Cattaraugus and Allegany reservations in this State.

PASSED November 15, 1847; "three-fifths being present."

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. The male Indians residing on the Cattaraugus and Allegany reservations, of the age of twenty-one years, whose names shall appear on the last preceding census, taken for the purpose of distributing the annuities due to the said Indians, shall assemble at one of their council houses on the first Tuesday in January, in each year, at nine o'clock in the forenoon, and by plurality of votes elect the following officers: A clerk and a treasurer for the nation, three peace makers and one marshal for the Indians residing on the Cattaraugus reservation, and three peace makers and one marshal for the Indians residing on the Allegany reservation, all of whom shall be Indians of the said nation qualified to vote.

Male Indi-
ans to
meet annu-
ally to
elect offi-
cers.

The peace makers last elected, who shall be present, shall preside in such meeting, and see that the same is conducted with order and regularity: if none of them be present, then such Indian qualified to vote, as shall be chosen for that pur-

Peace
makers to
preside at
election.

PART I.

pose by those present, shall preside: The clerk of the nation last before elected, shall be the clerk of the meeting, and shall keep faithful minutes of its proceedings and the result of all elections: if he be absent, or his office vacant, then such person as the electors present shall choose for that purpose, shall be clerk of the meeting. The elections shall be held at the council house in Cattaraugus, but a majority of the qualified voters assembled at any election, may direct that any future election be held at the council house in Allegany, and the same shall be so held accordingly.

Qualifica-
tion of
voters.

§ 2. If any person offering to vote at such election shall be challenged as unqualified, the presiding officers shall determine by an inspection of the last preceding census, taken as aforesaid, upon his right to vote; and if he be challenged on the ground of not being twenty-one years of age, the said officers shall ascertain the fact by the oath of the person offering his vote, or of any other Indian, which oath they are authorized to administer.

Officers
chosen by
ballot.

§ 3. The officers herein before named, shall be chosen by ballot, or by ayes and noes upon nomination by any elector, as the meeting may determine.

Tenure of
office.

§ 4. The officers thus elected shall hold their offices for one year, and until others are chosen in their places: If any vacancy shall happen during such year, the clerk of the nation shall within eight days thereafter, call a special meeting of the Indians qualified to vote as aforesaid, for the purpose of supplying the same, by posting in at least five of the most conspicuous places in the said nation, a notice, specifying the time of such meeting, which shall be within fifteen days and not less than ten days after the posting of such notice, at their council house: such meeting shall be held and conducted, and the same officers shall preside, and the clerk shall perform the same duties in relation thereto, as herein provided in respect to annual meetings.

Evidence of
election.

§ 5. The certificate of the election of any officer, signed by the persons presiding at any meeting, or by the major part of them, and by the clerk, shall be conclusive evidence of such election.

Treasurer
to give se-
curity.

§ 6. The treasurer shall, within thirty days after his election give security to said nation, by the name of the Seneca nation of Indians, in such sum and with such sureties as the attorney of the said nation shall approve, for the faithful performance of the duties of his office. For any breach of the condition of the said security, an action may be maintained in any court of this State, in the name and for the benefit of the said Indians by their attorney, in the manner provided by law for the breach of official bonds given by any county treasurer: until such security be given, he shall not be entitled to receive any funds or property of the nation; and if the same be not given within the time above provided, the office shall be deemed vacant: the treasurer shall receive all

moneys belonging to the nation, except the annuities paid by the government of the United States or by the government of this State, which shall be paid as heretofore to the chiefs in council, or to a special committee appointed by them, to be by them distributed, according to the customs of the said Indians: the treasurer may retain such per cent of the moneys received by him as the chiefs in council shall determine to be a reasonable compensation for his services: at least five days before the expiration of his office, he shall make an account to the peace makers of all moneys received and expended by him, with the vouchers for such expenditures; which account shall be settled by the peace makers, and shall be publicly read or stated by them at the next annual election for officers.

§ 7. The clerk shall have the custody of all the books, papers, and records belonging to the nation: he shall be furnished by the chiefs with a book of records at the expense of the nation, in which he shall enter all the proceedings and elections of any annual or special meeting of said Indians, and all orders, rules, regulations and certificates made or granted by the chiefs in council, and for that purpose shall attend the meetings of the said Indians, and the councils of the chiefs, and shall be their secretary: all orders of the chiefs for the payment of any money, shall be certified by the clerk to have been duly made, before the same shall be paid by the treasurer, and shall be retained by the treasurer as his vouchers. Every order, certificate, or other matter, certified by the clerk to be true extracts from his minutes, shall be competent evidence thereof: the clerk shall receive such compensation for his services, as shall be allowed by the chiefs in council, not exceeding fifty dollars in any one year.

Clerk's
power and
duties.

§ 8. The peace makers of each reservation shall have authority to hear and determine all matters, disputes and controversies between any Indians residing on said reservations, whether arising upon contract or for wrongs, and particularly for any encroachment or trespass upon any land cultivated or occupied by any one of them, and which shall have been entered and described in the clerk's book of records. When the controversy is between Indians residing on different reservations, the peace makers of either reservation may take cognizance of the same: but they shall not take cognizance of any claim founded upon any debt or demand originally contracted with a white man. They shall cause the defendant to be brought before them by the marshal, at such times and places as they shall appoint, and shall publicly hear the allegations and proofs of the parties, and make known their determination to them. They may issue orders or notice for the appearance of witnesses, and may compel their appearance by attachment, and by fine for not appearing, in the same manner as provided by law in relation to justices of the peace: they may administer oaths to witnesses, and may examine any party on oath to be administered by them in

Disputes
and con-
troversies
how deter-
mined.

PART I.

any case where the opposite party shall require such examination. In case any party shall fail to comply with the determination of the peace makers, within the time prescribed by them, they shall cause the same to be entered in a book to be provided by the chiefs for that purpose, and the party in whose favor such determination may be made, shall be entitled to recover the sum awarded in an action before any justice of the peace of the county in which a copy of such determination, certified by the peace makers, shall be conclusive evidence of the right of recovery, and the same proceedings shall be had therein, and executions shall be awarded in the same cases as in suits between white persons. But the peace makers shall in no case award more than one hundred dollars, exclusive of costs, in favor of any party, in any one complaint or suit. Any two peace makers shall be competent to perform any duties and exercise any powers herein assigned to the peace makers of any reservation.

Saving
clause.

§ 9. No peace maker shall act in any case in which he is related to either of the parties, or have any interest in the controversy, and when such relationship or interest in any two peacemakers is established to the satisfaction of the other, he shall associate with him any two chiefs residing on the reservation not related to the parties, and not having any interest in the controversy, for the hearing and determination of the suit, and such peace makers and the chiefs so appointed, or the majority of them, shall have all the powers and authority herein conferred upon the peace makers, in relation to such suit.

Right of
appeal.

§ 10. Any party dissatisfied with the determination of any tribunal so constituted, or of the peace makers in any suit, may appeal therefrom to a jury of six chiefs, to be selected as follows: Upon giving security to be approved by a peace maker to pay the amount that shall be awarded by such jury; the tribunal whose decision is appealed from, shall direct the marshal to summon twelve chiefs to be designated by such tribunal, to appear at a time and place to be specified not more than ten days thereafter, to determine such appeal: on the appearance of the chiefs so summoned, six of their number shall be drawn by lot to hear such appeal; if it be established to the satisfaction of the tribunal which summoned the said chiefs, that any of them are related to either of the parties, or are interested in the controversy, they shall be set aside, and other chiefs shall be drawn instead of them. The jury thus constituted, shall hear the appeal, examine the witnesses and parties on oath, if required, in the same cases and in like manner as herein provided, in respect to the peace makers, and the determination made by them, or a majority of them shall be conclusive, and shall be entered in the book kept by the peace makers, and may be enforced in like manner, and upon the like evidence as in the case of a determination by the peace makers. The chiefs hearing such

appeal, shall each be entitled to receive twenty-five cents for their services, to be paid in the first instance by the party appealing: in their final determination, they shall direct which party shall pay the costs and expenses of the suit and of the appeal.

§ 11. The peace makers shall not receive any fees for their services to their own use, but all such fees shall be paid to the treasurer of the nation for its use: and in every controversy before them, they shall award the costs to be paid by the party against whom their determination shall be made; which costs shall consist of the fees of the marshal as herein provided, and fifty cents for the attendance of the peace makers at any hearing of the parties, and if the same shall be adjourned, twenty-five cents for their attendance on the first appearance of the parties: the costs allowed shall be ascertained and specified by them in their determination.

Fees to be paid to treasurer.

§ 12. There shall be allowed to each of the peace makers by the chiefs in council, an annual compensation not exceeding fifty dollars in any one year, to be paid semi-annually by the treasurer.

Allowance to peace makers.

§ 13. The marshal shall execute all orders, summons and process issued or given to him by the peace makers or by any tribunal created according to the provisions of this act, and shall be entitled to receive for his services the same fees as are allowed by law to constables in courts held by justices of the peace.

Duty of the marshal.

§ 14. For any demand or right of action which any Indian of the said nation may have against any other Indian, and which, according to the provisions of this act, exceeds the amount which may be awarded by the peace makers, actions may be maintained and prosecuted in the courts of this State in the same manner and with the like effect as between white citizens.

Demands, how to be recovered.

§ 15. Any chiefs whose names have not been entered in the book kept by the clerk for that purpose, shall be entitled to have the same so entered: and if the fact of their being chiefs shall be disputed by any other chief, such fact shall be determined by the chiefs in council; but this provision shall not be construed to authorise them to depose any such chief, or to determine upon the propriety or expediency of entering his name.

Names of chiefs omitted to be entered.

§ 16. Any wilful false swearing by any person to whom any oaths may be administered according to the provisions of this act, shall be deemed perjury, and punished as such in the manner provided by law. And any person who shall unlawfully and corruptly procure such false swearing, shall be deemed guilty of subornation of perjury, and shall be punished as provided by law.

Penalty for false swearing.

§ 17. No land within the said reservations not already cultivated and improved, or under fence, shall hereafter be appropriated by any Indian to his own use, without the con-

Provisions as to unimproved lands.

PART I.

Lands appropriated for the use of families.

sent of the chiefs in council; whose duty, however, it shall be, on application, to allot and set apart for any Indian or any Indian family, so much wild land as the chiefs shall deem reasonable and an equitable proportion, in reference to the whole number of Indians not possessing land.

§ 18. Lands in the said reservations which are appropriated by any Indian or family to their own use, and cultivated and improved by them, shall, within two years after this act takes effect, be described by the person or persons claiming the same, with convenient certainty, and be entered in the books of record kept by the clerk of the said nation, and if not so entered, the claimant thereof shall not be entitled to maintain any suit for encroaching or trespassing thereon.

[Section 19 repealed by Laws of 1859, ch. 294.]

Provisions as to shingles or staves.

§ 20. Any Indian residing on the said reservations, may, without the aid or assistance of any white man, manufacture shingles or staves from any timber being, or any trees growing, upon any wild land therein, not allotted to, or entered by any other Indian, or being or growing upon any land allotted to, or entered by him, and may sell and dispose of the same for his own benefit. But no white person shall, under the pretence of being hired by any Indian, or any other pretence, be employed in any such manufacture, or in removing any timber, or cutting down any trees for that purpose.

General provision relative to the sale of trees.

§ 21. No timber being on any part of the said reservation, no trees growing thereon, nor any manufacture thereof, shall be sold or disposed of by any individual Indian or Indians, except as herein before provided; and every such sale or disposition shall be absolutely void. Any sale or disposition of such timber or trees, being or growing upon any wild land, in the said reservations, made by the chiefs in council, shall be for the benefit of the nation, and the proceeds of any such sale or disposition, shall belong to, and be paid into its treasury. And the attorney for the said Indians shall be authorized to prosecute for the same, and for the price of any timber or trees unlawfully sold, in the name of the nation, and to recover the amount thereof from any person who shall have received the same.

Actions how to be prosecuted.

§ 22. The proper action in the name of the said nation, may be prosecuted and maintained by the attorney for the said Indians, for any timber or trees, or the manufacture thereof, sold, taken or carried from the said reservations, in any other case than as herein provided and allowed, and shall recover, in such action, double the value of the timber, trees or article manufactured from them so sold, or taken, or carried from either of the said reservations.

Suits brought by the Indian attorney.

§ 23. If any suit shall be brought by the said attorney for the said Indians, without the assent of the chiefs in council, or of six of the said chiefs, when no council is held, he shall not be entitled to demand of the said nation, the costs of

such suit, in the event of his failure to recover, or of his inability to collect the same of the defendants.

§ 24. The officers of the said nation, who shall be elected at the annual election in May next, shall hold their offices only until others shall be elected in their places on the first Tuesday of January next.

Officers to
be elected
in May.

§ 25. Section five of the "Act for the protection and improvement of the Seneca Indians, residing on the Cattaraugus and Allegany reservations," passed May 8, 1845, and so much of sections two and seven, of the said act, as is inconsistent with the provisions of this act, are hereby repealed.

Repeal.

CHAP. 486.

AN ACT in relation to the Oneida Indians.

PASSED December 15, 1847; "three-fifths being present."

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. All conveyances of real estate hereafter executed by any Oneida Indian or Indians may be acknowledged before any justice of the peace, or other officer authorized to take acknowledgments of deeds.

Conveyances to be made declared valid.

§ 2. The office of attorney for the Oneida Indians is hereby abolished, and the superintendent of said Indians in addition to his present duties is hereby authorized and required to perform the duties heretofore required of such attorney, and shall be entitled to receive an annual salary of twenty-five dollars, and no more, for all services he may perform for said Indians.

Office of attorney abolished and superintendent to perform the duties.

§ 3. Twenty-five dollars a year for two years are hereby appropriated to pay said salary out of any moneys in the state treasury not otherwise appropriated; but said office of superintendent shall not continue beyond two years from the passage of this act; and thereafter said Indians shall have power to sell and convey their real estate the same as if they were natural born citizens of this state.

Salary allowed him for his services.

CHAP. 208.

AN ACT appropriating money to the Stockbridge Indians.

PASSED April 10, 1848; "three-fifths being present."

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. The sum of ten thousand dollars is hereby set apart and appropriated out of any moneys in the treasury not otherwise appropriated to the use and benefit of the Stockbridge tribe of Indians, now residing in Calmut county, Wis-

The sum of \$10,000 to be set apart

PART I.

consin, in consideration of the profits accruing to the people of this state, in the purchase and sale of lands heretofore belonging to said tribe of Indians.

Part how
to be in-
vested.

§ 2. Six thousand dollars of said sum shall be retained in the treasury of this state, and invested by the comptroller in such of the public stocks of this state, or of the United States, or of the cities of New York or Albany, as the comptroller shall deem most advantageous, and to be kept as a school and gospel fund, of the said Stockbridge Indians, the interest of which at six per cent shall be paid by the treasurer on the warrant of the comptroller, on the first day of June of each year hereafter, to the chiefs or head men of the tribe, or their attorney, or through such agent residing in the vicinity of such Indians as shall be authorized by the comptroller for that purpose, to be applied for the support of schools and their moral and religious education.

Part to be
paid to
chiefs.

§ 3. One thousand dollars of said sum shall be paid by the treasurer, on the warrant of the comptroller, out of any moneys not otherwise appropriated, to the chiefs or head men of such tribe of Indians or their attorney, to be applied to pay the expenses of removing with their consent such of said tribe of Indians as are now remaining in this state, to Calmut county, Wisconsin, and the remaining sum of three thousand dollars shall be paid in like manner to the said chiefs or head men or their attorney, to be equally divided amongst the several families according to their respective numbers.

STATE OF NEW YORK.

In Assembly, March 27, 1849.

WHEREAS, It appears from the communication of his Excellency, the Governor, made to the Legislature on the 20th day of March, instant, that a portion of the native Indians residing in this state on the Cattaraugus and Allegany reservations, met in convention, and on the fourth day of December last, formed a constitution for their government, founded on popular elections, and thereby abrogated their former government by chiefs; and, it further appearing that such new constitutional government has been recognized by the government of the United States, as the government de facto, of said Indians, therefore,

Govern-
ment recog-
nized.

Resolved, (If the senate concur,) That the recognition by the government of the United States of the new constitutional government lately formed by the Indians residing on the Cattaraugus and Allegany reservations, establishes the new government as that which the state of New York must receive and acknowledge in its dealings with said Indians, and that the officers of this state ought, and are hereby instructed, to respect such new government accordingly.

Resolved, (If the senate concur,) That in future the annuity which, under the treaty with the Senecas, is made payable to the chiefs of that nation, hereafter be paid by the treasurer,

on the warrant of the comptroller, to the order of such officer or agent as shall, under said new constitution, be appointed to receive the same and give proper discharges therefor.

By order,

PHILANDER B. PRINDLE,
Clerk of Assembly.

In Senate, April 6, 1849.

Resolved, That the senate do concur in the foregoing resolutions.

By order of the senate,

A. H. CALHOUN, *Clerk.*

CHAP. 378.

AN ACT in reference to the new government of the Seneca Nation of Indians on the Cattaraugus and Allegany reservations.

PASSED April 11, 1849.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. All the powers and duties which by any laws of this state are granted to or charged upon the chiefs of the Seneca nation of Indians, residing on the Cattaraugus and Allegany reservations in this state, are hereby transferred and granted to and charged upon the president and councillors of the Seneca nation of Indians, holding or who shall hold office under the constitution of said nation, of the fourth day of December last, and all powers and duties granted to or charged upon said chiefs in council by the laws of this state, are hereby transferred and granted to and charged upon such president and councillors in council assembled.

All powers transferred to the president and councillors of the nation.

CHAP. 420.

AN ACT for the benefit of Indians.

PASSED April 11, 1849.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. Every person who shall sell or give to any Indian within this state, any spirituous liquor, or any intoxicating drink, shall be deemed guilty of a misdemeanor, and on conviction shall be punished by a fine of not less than twenty-five dollars, nor more than fifty dollars, or by imprisonment in the county jail of not more than thirty days, or by both such fine and imprisonment.

Penalty for giving liquor to Indians.

As amended by Laws of 1857, ch. 614.

PART I.
Provision
relative to
pawns or
pledges
made by
Indians for
liquor.

Any Indian
a compe-
tent wit-
ness.

Duty of
peace ma-
kers.

Part of R.
S. and
other laws
to apply.

Provision
respecting
marriage
among In-
dians.

§ 2. Every person who shall receive from any Indian residing on any Indian reservation within this state, or any Indian residing in this state, either absolutely in payment or exchange, or in pawn or pledge for the payment, in whole or in part, for any spirituous liquor or intoxicating drink, sold or delivered to such Indian, or to any other Indian, any blanket, wearing apparel, implement, or other goods or chattels, shall forfeit ten times the value of the article so received, to be sued for and recovered, with costs, by such agent as shall be appointed by the authority of the tribe or band to which such Indian shall belong, or with which he shall reside; or by the attorney (if any) appointed by the authority of this state for such tribe or band, and in the name of such tribe or of the people of the state of New York. And if there be no such attorney or agent, such suits shall be prosecuted by the overseers of the poor of the town in which such Indian shall reside, in and by their name of office. Any Indian shall be a competent witness to prove the receipt of such goods or chattels, and to prove the sale or gift of any intoxicating drink to any Indian. Any article or property sold, exchanged, or pawned, or pledged as aforesaid, for spirituous liquor, or any intoxicating drink, or the value thereof, may be reclaimed and recovered by the Indian so selling or pledging the same, from the person to whom the same shall have been sold or pledged, or from any other person to whom it may have been delivered, assigned, sold or transferred; and for the recovery of the same such Indian may maintain an action in any court having cognizance thereof. And in case such action shall not be brought or commenced within twenty days from the sale or pledge of such article or property, then it shall be lawful for the peace makers of the reservation (if any there be) to which such Indian belonged and if none, for the overseers of the poor of the town, to demand, sue for and recover, the article or property so sold or pledged, in any court having cognizance thereof, in and by their name of office; in which action the Indian who made such sale or pledge shall be a competent witness for the plaintiff.

§ 3. The first title of the eighth chapter and second part of the Revised Statutes, "of husband and wife," and all laws in addition to or amendatory thereof, and the act entitled "An act to punish seduction as a crime," passed March 22, 1848, are hereby extended over and made applicable to all Indians residing within the state of New York, with the same force and effect as if they were citizens of this state, and the same courts having jurisdiction under those laws in cases of citizens, shall have jurisdiction in like cases in which one or more Indians may be concerned.

§ 4. All Indians who heretofore contracted or shall hereafter contract marriage according to the Indian custom or usage, and shall cohabit as husband and wife, are and shall be deemed and held to be lawfully married, and their children

legitimate. Marriages between Indians may be solemnized by peace makers within their jurisdiction, with the like force and effect as if by a justice of the peace.

§ 5. Courts of special sessions shall have jurisdiction and power to hear and determine charges for misdemeanor committed within their respective counties, in violation of any statute prohibiting the selling or giving to any Indian any spirituous liquors or intoxicating drinks, and shall proceed thereon in the manner prescribed in the third title of the second chapter, and fourth part of the Revised Statutes, as amended by subsequent laws, except that such courts shall have and exercise such jurisdiction and power, without requiring the party charged to give bail for his appearance at the next criminal court, and the giving of such bail shall not deprive the said courts of special sessions of the said jurisdiction and power.

Powers of
courts of
special
sessions.

As amended by Laws of 1857, ch. 614.

§ 6. When any fine shall be imposed upon a conviction for any such misdemeanor, the costs and expenses of prosecuting the same shall first be paid out of any such fine, and one moiety of the residue shall be paid into the treasury of the nation of Indians to which the Indian to whom such liquor or drink was sold or given shall belong, or with which he shall be residing, and if there shall be no such treasurer then to the chiefs of the tribe or nation to which the Indian belongs, or with which he was residing, to whom such liquor or drink was sold or given, to be applied to the public purposes of such nation or tribe, and the other moiety shall be paid into the treasury of the county where the conviction shall be had.

Fines how
recovered
and to
whom paid.

§ 7. All nations, tribes or bands of Indians who own and occupy Indian reservations within this state, and hold lands therein as the common property of such nations, tribes or bands, may by the acts of their respective Indian governments, divide such common lands into tracts or lots, and distribute and partition the same, or parts thereof, quantity and quality relatively considered to and amongst the individuals or families of such nations, tribes and bands respectively, so that the same may be held in severalty, and in fee simple, according to the laws of this state; but no lands occupied and improved by any Indian according to the laws, usages or customs of the nation, shall be set off to any person other than the occupant, or his or her family.

Nations or
tribes of In-
dians in
this state,
how to hold
land.

§ 8. In case such distribution or partition be made, the deeds to be made to effect the same, shall be made by such officers, agents or commissioners as said governments shall appoint, and the commissioners of the land office shall approve, but before any such deeds be executed, the proceedings and acts authorizing such execution and appointing the parties so to do, shall be authenticated and proved before and to the satisfaction of the county judge of the county in which the

Deeds of
partition,
how made
and by
whom.

PART I.

Deeds to be
acknowledged and
examined
by judge.

lands to be conveyed shall lie, and recorded in the clerk's office of the county.

§ 9. Every deed which shall be executed under and in pursuance of such authority, shall be acknowledged before such county judge by the parties who shall execute it, and said judge shall examine such deeds, and see that they be in due form, and in pursuance of the authority under which they be executed; and endorse on each deed his certificate of such examination and acknowledgment, and such certificate shall authorize the county clerk to record such deeds in the records of deeds for his county.

Restriction.

§ 10. No lands thus distributed and partitioned, shall be alienable by the grantee thereof or the heirs of such grantee for twenty years after the day of the recording of the said deed thereof; but they may be partitioned amongst the heirs of any grantee who shall die. They shall not be subject to any lien or incumbrance by way of mortgage, judgment or otherwise.

Commissioners
of the land
office to receive money to be
put in trust
with the
state, &c.

§ 11. The commissioners of the land office are hereby authorized and directed to receive from the Seneca nation, or any nation, tribe or band of Indians residing within this state, all such sums of money as such Indians may wish to put in trust with the state of New York, and the same shall be paid into the treasury, and by and under the direction of the commissioners of the land office, vested in good and safe securities by the comptroller, or in stocks of this state bearing interest at the rate of six per cent, to be created and issued therefor, and called "The Indian Loans;" but such moneys shall not be so received except upon the condition that the interest or income of such moneys be paid over and applied under the direction and at the discretion of the commissioners of the land office, for the encouragement of religion and promotion of education amongst the Indians, and for other purposes of public interest, use and benefit, being fit and proper objects of taxation as matters of general and public concern.

CHAP. 37.

AN ACT establishing a fund for the benefit of the Stock-bridge Indians.

PASSED March 2, 1850; "by a two-third vote."

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

\$30,000
credited to
Indians.

§ 1. The comptroller shall place to the credit of the Stock-bridge Indians, on the books of his office, the sum of thirty thousand dollars, to remain in the treasury or be invested in the name of the people, by or under the direction of the commissioners of the land office, as shall be directed by the legislature.

CH. XXVI.
Six per cent
to be paid
annually.

§ 2. Six per cent per annum on said sum of thirty thousand dollars shall be paid by the treasurer on the warrant of the comptroller, annually, to the chief sachem and head men of said tribe or nation, or upon their order, or the order of a majority of them, to be by them expended in promoting the christian religion, general education, agriculture and the mechanic arts among their people, and in promoting the general welfare of their tribe or nation.

Chief Sa-
chem with
head men
to be certi-
fied.

§ 3. Before any money shall be paid by this act (except as provided in the fifth section thereof), it shall be the duty of the chief and head men of said tribe or nation of Indians to cause to be filed in the office of the secretary of state of this state, a certificate duly acknowledged as hereinafter provided, setting forth the name of the chief sachem and of the head men of said tribe or nation; which certificate shall be filed annually immediately after their annual election, and shall be signed by the chief sachem and head men who shall be in office at the time said election shall be held.

Certificate
to be ac-
knowledg-
ed.

§ 4. Such certificate, and the order mentioned in the second section of this act, shall be duly acknowledged by the chief sachem and head men of said tribe or nation, or a majority of them, before some person legally authorized to take the acknowledgment of deeds to be recorded in this state.

[Section 5 temporary.]

§ 6. The sum of six thousand dollars mentioned in the second section of the act entitled "An act appropriating money to the Stockbridge Indians," passed April 10, 1848, and the income thereof, is hereby placed under the direction and control of the commissioners of the land office, with the same powers as are given to them in this act in reference to the other moneys herein mentioned.

Commis-
sioners of
land office
to have con-
trol of
\$6000.

§ 7. The commissioners of the land office shall report annually to the legislature all their proceedings under this act, and all other acts which confer upon them powers in reference to Indian affairs.

Commis-
sioners to
report to
legislature.

CHAP. 89.

AN ACT to provide for the support and education of a limited number of Indian youth, of the state of New York, at the State Normal School.

PASSED March 23, 1850; "three-fifths being present."

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. The treasurer shall pay, on the warrant of the comptroller, to the order of the state superintendent of common schools, from the general fund, a sum not exceeding one thousand dollars per year, for the support and education of ten

\$1000 a year
appropri-
ated.

PART I.

Indian youth in the State Normal School, which moneys are hereby appropriated for the purpose of this act.

Selection of pupils.

§ 2. The selection of such youth shall be made by the state superintendent of common schools, from the several Indian tribes located within this state; and in making such selection due regard shall be had to a just participation in the privileges of this act by each of the said several tribes, and if practicable reference shall also be had to the population of each of said tribes in determining such selection.

Age of pupils.

§ 3. Such youth shall not be under sixteen years of age, nor shall any such youth be supported or educated at said Normal School for a period exceeding three years.

Their guardians and expenses.

§ 4. The executive committee of the State Normal School shall be the guardians of such Indian youth, during the period of their connection with the school, and shall pay their necessary expenses, not to exceed one hundred dollars per year for each pupil, to be defrayed out of the money appropriated by the first section of this act.

To enjoy all privileges.

§ 5. The Indian pupils selected in pursuance of this act, and attending said Normal School, shall enjoy the same privileges of every kind as the other pupils attending said school, including the payment of traveling expenses not exceeding ten dollars to each pupil.

CHAP. 198.

AN ACT to authorize the Cayuga Nation of Indians to purchase lands in this state.

PASSED April 17, 1851; "three-fifths being present."

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Lands how purchased and held.

§ 1. The chiefs of the Cayuga nation of Indians, are hereby authorized and empowered to purchase lands in this state, and to take a deed of the same, in the name, and on behalf of said nation. The lands purchased under this act, shall be the property of, and belong to the said Cayuga nation of Indians, and to be held by them in common, and as all reservations of lands are held by other tribes of Indians in this state, subject however, to be divided and distributed among said Indians in pursuance of the laws of this state, passed April eleventh, one thousand eight hundred and forty-nine, chapter four hundred and twenty; but the said Cayuga nation of Indians, shall not have power to alienate said lands; the deed of the said tract of land so purchased shall be filed and recorded in the office of the secretary of state, and an exemplified copy of the same shall be delivered to the said chiefs for the use of said nation; said deed shall also be recorded in the county clerk's office of the county in

which said lands shall lie. The Cayuga nation of Indians shall have power to incorporate and adopt into their nation, any Indian or Indians of other tribes of the six nations of Indians, or those intermarried with them, or any of them, and their children, upon such terms as the council of the chiefs of said nation shall deem proper; such person or persons after being adopted into said nation, shall have all the rights, privileges and immunities of the Cayuga nation of Indians, as if they had been born Cayugas.

CH. XXVI.
Adoption
of other In-
dians.

§ 2. The commissioners of the land office shall pay on the order of said chiefs, such sums of money agreed upon by the parties for said lands, out of the annuities payable by this state to the said Cayuga nation of Indians, and the said commissioners of the land office, shall have power to advance such annuities, a sum which will be sufficient to pay for the lands so purchased, provided it shall be deemed proper, and for the best interest of said Indians; but no contract made with the said Cayuga nation of Indians, shall be binding upon said nation, without the advice and consent of the said commissioners of the land office.

Lands how
paid for.

CHAP. 19.

AN ACT to make partition of the fund provided by the act entitled "An act establishing a fund for the benefit of the Stockbridge Indians," passed March 2d, 1850.

PASSED February 13, 1852; three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. There shall be paid by the treasurer, on the warrant of the comptroller, of the fund provided by the act entitled "An act establishing a fund for the benefit of the Stockbridge Indians," passed March 2d, 1850, the sum of eighteen thousand dollars and interest thereon as follows: To John W. Quinney and John Hadcocks, being the agents of said Indians, the sum of nine thousand dollars and interest, to be by them expended in paying the debts of said tribe, and in promoting their general welfare, and the sum of nine thousand dollars and interest thereon, to such agent as may be duly appointed, by that portion of said Indians known as the "Citizen Party," to be paid to the members of the said Citizen Party of Stockbridge Indians, by the head.

Money to be
paid to the
Indians.

§ 2. The remainder of said fund, after deducting the sums above specified, shall be and remain a perpetual fund for the exclusive benefit of said tribe of Indians, the interest of which shall be paid to the sachem and councillors of said tribe, as now provided by law.

Perpetual
fund.

[Section 3 temporary.]

CHAP. 444.

AN ACT to provide for the establishment of schools upon the Tonawanda reservation, in this state, for the instruction of Indian children.

PASSED June 21, 1853; three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Money to be
paid for In-
dian
schools.

§ 1. The treasurer shall pay on the warrant of the comptroller, to the order of the state superintendent of common schools, the sum of one thousand dollars, for the purpose of repairing and enlarging such school houses as have heretofore been erected for Indian schools on or near the Tonawanda reservation, in the county of Genesee, and for erecting such additional buildings as shall be necessary for establishing two boarding schools, one for boys and one for girls, on said reservation, to be paid to such persons as shall be appointed, as hereinafter provided, as trustees of such schools; the schools to be for the instruction of Indian children between the ages of four and eighteen years.

Trustees
and their
duties.

§ 2. The trustees of said schools on said reservation shall consist of two individuals, to be elected annually by the legislative council of said reservation, together with three white citizens, on or near said reservation, to be appointed by the state superintendent of common schools, and to hold their office during his pleasure, whose duty it shall be to locate the school houses on or near the said reservation, to cause suitable buildings to be erected for said schools, or to repair such buildings as are already erected for school purposes, and to have the general supervision of said schools; to report annually the condition of the said schools and the number of children taught to the state superintendent of common schools, and such other information as the state superintendent shall direct.

Farm to be
set apart
for male
school also
for female
school.

§ 3. There shall be connected and set apart, by and with the consent of the Indians, a farm for the male school on said reservation, not exceeding eighty acres nor less than fifty acres of land, and for the female school twenty acres of land; and the male members of said school, during the hours not appropriated to literary studies, shall be taught in the science of practical agriculture; and the members of the female school, in addition to their common studies, shall be taught and instructed in domestic duties.

Trustees to
receive the
money,
upon com-
plying with
certain con-
ditions.

§ 4. The said sum of one thousand dollars shall be paid over to the trustees of the Tonawanda schools, in the manner prescribed in the first section of this act, whenever the trustees, or any two of them, shall verify by affidavit that the said sum of one thousand dollars has been expended in erect-

ing, repairing or furnishing suitable buildings for said schools, or so much thereof as shall be expended for the above purposes, within one year from the passage of this act.

§ 5. The trustees may put in operation any one or more of said schools, as soon as suitable buildings can be procured; there shall be four terms, of eleven weeks each, in each year, and the said trustees shall report at the expiration of each term the whole number of scholars taught in each school, the number of days each scholar has attended, and the average number of scholars for the term; and, upon the receipt of such report by the state superintendent of common schools, the sum of twelve dollars and fifty cents for each scholar the said schools shall so average, but not to exceed the sum of two hundred and fifty dollars, in all, for any one quarter, shall be paid to the said trustees, in the same manner as provided by the first section of this act; which sum or sums shall be paid out by the trustees, in such manner as they shall deem proper, for the purchase of books, stationery, apparatus, food, clothes and other necessities for said schools.

Schools to
be put in
operation.

§ 6. The proceeds of said farms as shall be attached to said schools shall be appropriated to the support of said schools.

Proceeds of
farms, how
appropriated.

[Sections 7 and 8 temporary.]

CHAP. 601.

AN ACT to establish the Seneca Indian High School on Cattaraugus reservation.

PASSED July 21, 1853.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. For the purpose of establishing and maintaining a high school on the Cattaraugus reservation, for the education of the youth belonging to the Seneca nation of Indians, Maris B. Pierce, Daniel Twoguns, William Krouse, Lewis Seneca, Nathaniel T. Strong, George W. Clinton, Philip E. Thomas and John O. Spencer, and their successors, are hereby constituted a body corporate, by the name of "The board of education of Seneca Indian high school," and shall possess all the powers and be subject to all the provisions contained in first three sections in the third title of the eighteenth chapter and first part of the Revised Statutes, and be capable of taking and holding, by gift, grant or devise, real and personal property, to be applied to the purposes of the corporation, the annual income of which shall not exceed five thousand dollars.

Board of
education.

§ 2. The persons named shall be the first trustees of the said corporation, and shall supply any vacancies that may occur in their number by their own appointment. Five of

First trustees.

their number shall constitute a quorum for the transaction of business.

CHAP. 175.

AN ACT to prevent the destruction of timber on the lands of the Tuscarora Indians, and to regulate the highway labor among said Indians.

PASSED April 7, 1854 ; three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Lands, how
to be allot-
ted here-
after.

§ 1. No lands belonging to the Tuscarora nation of Indians, in the county of Niagara, not already cultivated and improved, shall hereafter be appropriated by any Indian to his own use without the consent of the chiefs or head men of said nation, in council ; whose duty, however, it shall be, on application, to allot and set apart for any Indian or Indian family, not possessing land, so much wild land as the chiefs shall deem reasonable and equitable.

What tim-
ber may be
sold.

§ 2. Any Indian residing on said lands, having land allotted to him by the chiefs or entered as herein provided, may, with the consent of the chiefs, sell for his own use and benefit any timber or trees on that portion of such lands which he shall actually and in good faith clear for the purpose of cultivation.

Sales of
timber on
uncultiva-
ted land
void.

§ 3. No timber being on any part of said lands, no trees growing thereon nor any manufacture thereof shall be sold or disposed of by any individual Indian or Indians, except as hereinafter provided, and every such sale or disposition shall be absolutely void ; and any sale or disposition of such timber or trees, being or growing upon any wild land belonging to said Indians, made by the chiefs in council, shall be for the benefit of the nation, and be paid to said chief or such chief as the council may appoint as their treasurer, and the said chiefs shall be authorized to prosecute for the same, and for the price of any timber or trees unlawfully sold, in the name of the nation, and to recover the amount thereof from any person who shall have received the same.

Actions for
timber,
how
brought.

§ 4. The proper action in the name of the said nation may be prosecuted and maintained by the chiefs for any timber or trees, or the manufacture thereof, sold, taken or carried from the lands of the said nation in any other case than is herein provided and allowed, and shall recover in said action double the value of the timber, trees or article manufactured from them, so sold, taken or carried from said lands.

Allotments
to be enter-
ed in book.

§ 5. The chiefs of said nation, in council, may from time to time appoint a clerk, who in a book kept for that purpose shall from time to time enter all allotments of lands set apart for any Indian or Indian family, and of the part and portion

thereof from which said Indian or Indian family may sell for his own use any timber and trees, and the part he may be permitted to clear for the purpose of cultivation, and in which all consents for the selling of timber shall be entered.

§ 6. Any Indian who shall cut or destroy any timber or trees standing or growing on any timbered lands of the said nation, not set apart for the purposes of cultivation by the chiefs in council, or without the consent of the chief, shall be deemed a trespasser and liable to be prosecuted for the same by the chiefs, in the name of the nation, in any court having cognizance of such actions in this state, and in such action may recover twice the value of the timber so cut down and destroyed, and the amount of such recovery shall be collected for the benefit of the said nation; and, in such action, judgment may be rendered on such recovery, and executions issued, in the same manner as against citizens of the state of New York.

Indians
cutting tim-
ber to be
deemed
trespassers.

§ 7. Any Indian who shall wilfully cut down or destroy any timber or trees standing and growing on the reserved timber lands of the said Indians, except in the manner herein provided, shall be deemed guilty of misdemeanor and liable to a fine not exceeding twenty-five dollars in addition to three times the value of the timber cut down or destroyed, or by imprisonment in the county jail of the county of Niagara for a term not exceeding sixty days, or by such fine or imprisonment.

Punish-
ment for
destroying
timber.

§ 8. The said chiefs in council may, at any time before the first day of July, in each year, appropriate such amount of highway labor upon each and every male Indian, over the age of twenty-one years, as they shall deem just and reasonable, not exceeding fifteen days upon any one individual in any year; the number of days' work, and the name of the individual assessed, shall be entered upon a roll to be made and signed by the said chief or the president of the council under their direction; the said chiefs may also designate suitable person or persons under whose directions the said labor shall be applied, and the plan and manner of its application; the person or persons so designated shall give notice to those assessed to perform said labor, and of the time of performance and when to be performed, at least twenty-four hours before the time; and in case any person so assessed, after being so notified, shall neglect or refuse to perform the said labor, he shall forfeit seventy-five cents for each day's labor so assessed, to be recovered by an action in the name of the nation, in which action the said assessment roll shall be conclusive evidence of the regularity of the assessment; and, for the purposes of said action, the said Indians shall be regarded as inhabitants of the town of Lewiston, Niagara county, and the proceedings in said action shall be the same as in actions between citizens of this state; and in case it becomes necessary to serve any paper upon the said nation as a party, it

Highway
labor.

PART I.

shall be served by delivering such paper to any two chiefs personally.

CHAP. 301.

AN ACT relating to schools on the Tonawanda reservation.

PASSED April 15, 1854 ; three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows :

Board of
education.

§ 1. The trustees of schools on the Tonawanda reservation in this state, authorized to be elected and appointed by chapter four hundred and forty-four of the Laws of eighteen hundred and fifty-three, and their successors in office, shall constitute a board of education for said tribe of Tonawanda Indians, and are hereby constituted a body politic and corporate by the name and style of "The board of education of Tonawanda," and said board of education, besides the general powers and privileges of a corporation, shall have authority:

Property.

1. To take and hold by gift, grant or devise, any real or personal property from said tribe of Tonawanda Indians, or from any one of them, or from any other person, such lands not to exceed one hundred acres, to be used for the purposes of such school as shall be established by said board of education.

By-laws.

2. To make and establish by-laws, rules and regulations for the purpose of the government of the schools under their care, including the departments of literature, agriculture and domestic arts.

3. To appoint of their number a president and secretary.

4. To adjourn from time to time, as they may deem expedient.

5. To receive and apply the moneys appropriated for the support of schools under their care.

Appropriations.

§ 2. The treasurer shall pay, on the warrant of the comptroller, to the order of the state superintendent of public instruction, the sums of money appropriated by chapter four hundred and forty-four of the Session Laws of eighteen hundred and fifty-three to erect school houses and provide for the support of schools for the instruction of Indian children, which sum shall be paid out of the surplus income of the United States deposit fund at such time, within two years after the passage of this act, as the state superintendent of public instruction shall deem proper, and be applied to erect school houses, necessary dwellings, pay rent or teachers' wages, as shall be, in the opinion of said superintendent, necessary to establish and secure the prosperity of such schools; and if said superintendent shall deem it expedient, any part of such sums may be advanced to said board of

education, and applied to any of the purposes specified in this act, under the direction of said superintendent.

§ 3. The said trustees appointed by the state superintendent, before receiving any moneys under this act, shall execute to the people of this state, and deliver to said superintendent, a bond in the penalty of six thousand dollars, with two good and sufficient sureties who shall justify in the said sum of six thousand dollars, and be approved of by said superintendent, conditioned that said trustees so appointed will faithfully discharge their duty as such trustees, and will, at all times when called upon by said superintendent, account for all moneys received by them under the provisions of this act.

CHAP. 26.

AN ACT to prevent the sale or removal by Indians or other persons, of stone, wood, timber or bark from the Onondaga Indian reservation.

PASSED February 24, 1855.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. All contracts which shall hereafter be made by any person or persons other than Indian, with any Indian or Indians of the Onondaga nation, or with any Indian of any other nation or tribe residing or living with said Onondaga Indians, without the written consent of the agent of said Indians, for or concerning any stone, or any wood, timber or bark of any kind, growing or being on the lands of said Onondaga nation, or that may have been taken or removed from said lands, shall be absolutely void. And any person or persons receiving, without such written consent, from any such Indian or other person, any such stone, wood, timber or bark of any kind, either on said reservation or that may have been removed therefrom, knowing the same to have been taken or removed from said reservation, shall be liable as trespassers for five times the value of such stone, wood, timber or bark, to be prosecuted for by the agent of said Onondaga Indians, in the name of the people of this state.

Certain contracts void.

§ 2. The agent of the Onondaga nation of Indians, is hereby authorized to prosecute for all violations of this statute, in the name of the people of the state of New York, and the moneys arising therefrom, when collected, shall, after deducting his fees, and all reasonable costs and expenses of collection, be paid to the chiefs of the said nation for the benefit of said nation.

Agent to prosecute offenders.

CHAP. 233.

AN ACT to incorporate the Thomas Asylum for Orphan and destitute Indian children, on the Cattaraugus reservation, and to provide for its establishment and maintenance.

PASSED April 10, 1855; three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Title and
name of
trustees.

§ 1. For the purpose of establishing and maintaining on the Cattaraugus reservation, an asylum for orphan and destitute Indian children, Eber M. Petit, Chauncey T. Carrier, S. G. Ellis, Elisha Brown, and Asher Wright, white men, and Sylvester Lay, Wallace King, Zechariah L. Jameson, Lewis Seneca and Joshua Pierce, Indians, and their successors, are hereby constituted a body corporate, by the name of the Thomas Asylum for Orphan and Destitute Indian Children, and shall possess the powers and be subject to the provisions of the third title of the eighteenth chapter and first part of the Revised Statutes, so far as the same are applicable, and have not been repealed; and shall be capable of taking and holding, by gift, grant, or devise, real and personal property, to be applied to the purposes of the corporation, the annual income of which shall not exceed five thousand dollars.

Property.

Trustees.

§ 2. The persons above named shall be the first trustees of the said corporation, and shall supply any vacancies which may occur in their number by their own appointment. Six of their number shall constitute a quorum for the transaction of business.

Real
estate.

§ 3. The said trustees may acquire the right to the occupancy and use of land on the Cattaraugus reservation, for the purposes of the corporation, not exceeding fifty acres, either by an act of appropriation by the government of the Seneca nation of Indians, or by lease or purchase from any individual Indian or Indians; but if such land shall at any time cease to be needed for the purposes of said corporation, it shall revert to said government, in case it was received therefrom, on payment of the fair value for such improvements as may have been made thereon; and if it shall have been obtained by purchase from any Indian or Indians, the trustees may sell it, with the improvements thereon, to any Indian or Indians; the proceeds, in either case, to be devoted to the charitable objects of the corporation.

[Section 4 temporary.]

§ 5. The said asylum shall be entitled to share in the appropriations hereafter to be made to the incorporated asylums in the state, and for this purpose shall be deemed an incorporated orphan asylum of this state.

§ 6. The trustees of said asylum shall, on application, select orphan children from each of the several reservations located within this state, and in making such selection, regard shall be had to a just participation in the privileges of this act, by each of said reservations; and, if practicable reference shall be had to the population residing on each of said reservations in determining such selection.

CH. XXVI.
Selection of
orphans.

§ 7. The Thomas asylum shall at all times be subject to the visitation and control of the superintendent of public instruction, or such board of commissioners for Indian affairs as may hereafter be constituted and appointed by the legislature; and the trustees of said asylum shall annually report to said superintendent of public instruction, or to said commissioners, the condition of their asylum, including a true account of the receipts and disbursements of all moneys which shall come into their hands for the benefit of such asylum.

Subject to
visitation
of superin-
tendent of
public in-
struction.

CHAP. 71.

AN ACT to facilitate education and civilization among the Indians residing within this state.

PASSED April 1, 1856; three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. The superintendent of public instruction shall be charged with providing the means of education for all the Indian children in the state. He shall cause to be ascertained the condition of the various bands in the state in respect to education; he shall establish schools in such places, and of such character and description as he shall deem necessary; he shall employ superintendents for such schools, and shall, with the concurrence of the comptroller and secretary of state, cause to be erected, where necessary, convenient buildings for their accommodation.

Duty of su-
perinten-
dent of pub-
lic instruc-
tion.

§ 2. In the discharge of the duties imposed by this act, the said superintendent shall endeavor to secure the co-operation of all the several bands of Indians, and for this purpose, shall visit, by himself or his authorized agent, all the reservations where they reside, lay the matter before them in public assembly, inviting them to assist either by appropriating their public moneys to this object, or by setting apart lands and erecting suitable buildings, or by furnishing labor or materials for such buildings, or in any other way which he or they may suggest as most effectual for the promotion of this object.

Indians to
co-operate.

§ 3. In any contract which may be entered into with the said Indians, for the use or occupancy of any land for school grounds, sites or buildings, care shall be taken to protect the title of the Indians to their lands, and to reserve to the state

Indian title
to be pro-
tected.

PART I.

the right to remove or otherwise dispose of all improvements made at the expense of the state.

Children to
draw pub-
lic money.
Enumera-
tion.

§ 4. The Indian children in the state, between the ages of four and twenty-one years, shall be entitled to draw public money the same as white children. The superintendent shall cause an annual enumeration of said Indian children to be made, and shall see that the public money, to which they are ratably entitled, is devoted exclusively to their education.

\$5000 appro-
priated.

§ 5. To carry into effect the provisions of this act, the sum of five thousand dollars is hereby appropriated out of the surplus income of the United States deposit fund, to be paid by the treasurer, on the warrant of the comptroller, from time to time, to the order of the superintendent of public instruction.

Vouchers to
be filed.

§ 6. The superintendent shall take and file in his office, vouchers and receipts for all the expenditures made, under this act, subject to the inspection of the joint committee to examine the accounts of the auditor and treasurer; and shall annually report to the legislature all his doings, by virtue of the authority vested in him; and for this purpose said superintendent may require full and detailed reports, in such form as he may prescribe, from those having the immediate supervision of any Indian schools in this state.

CHAP. 45.

AN ACT to relieve the Seneca nation of Indians from certain taxes on the Allegany and Cattaraugus reservations.

PASSED February 19, 1857; three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

[Sections 1, 2, 3 temporary.]

Tax not to
be here-
after assess-
ed.

§ 4. No tax shall hereafter be assessed or imposed on either of said reservations, or on any part thereof, for any purposes whatever, so long as said reservations remain the property of the Seneca nation; and all acts of the legislature of this state conflicting with the provisions of this section, are hereby repealed.

CHAP. 233.

AN ACT to provide for the distribution of the annuity due to the Onondaga Indians in Western New York.

PASSED April 2, 1857; three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Appoint-
ment, how
made.

§ 1. The governor of this state shall nominate and the senate appoint some proper person to be agent of the Onon-

daga Indians in western New York. Such agent shall hold his office for four years, unless sooner removed, for cause, by the governor.

§ 2. It shall be the duty of such agent annually, on or before the first Monday of June, to take an enumeration or census of all the Onondaga Indians, residing on the Allegany, Cattaraugus, Tuscarora, and Tonawanda reservations, and return said enumeration to the comptroller, who shall, upon receiving the enumeration of all the Onondaga Indians in this state, divide and apportion the annuity moneys due to the Onondaga Indians residing upon the above named reservations, and shall transmit such amount to the agent appointed under this act. Duty of agent.

§ 3. If by any accidental oversight, any Onondaga Indian, entitled to receive a portion of the annuity money, shall have been left out of the enumeration in any year, it shall be the duty of such agent to correct the same the first opportunity, and to report the same to the comptroller. Sureties.

§ 4. Before entering upon the duties of his office, such agent shall execute with two sufficient sureties, to be approved by the county clerk of the county of his residence, a bond to the people of this state, in the penal sum of two thousand dollars, and conditioned that such agent shall faithfully and honestly execute the duties of his office, and shall annually report to the comptroller, and produce his vouchers for the payment of all moneys committed to his charge under this act; said bond to be filed in the office of the comptroller.

§ 5. It shall be the duty of said agent to pay and distribute the annuity money received under this act, as soon as may be, and without delay, and in making such distribution the same shall be paid to heads of families and individuals whenever the same can be done. To pay over money.

§ 6. The said agent for taking the census of the Onondaga Indians, on the Allegany, Cattaraugus, Tuscarora and Tonawanda reservations, and paying the annuities to them, as provided for in this act, annually, shall receive an annual salary, including all expenses, of one hundred and fifty dollars, from the date of his commission, to be paid by the treasurer on the warrant of the comptroller, whenever satisfactory and proper vouchers for the payment of said annuities shall be produced to the comptroller. Salary of agent.

Amended by Laws of 1858, ch. 73.

§ 7. All acts and parts of acts inconsistent with this act, are hereby repealed.

CHAP. 659.

AN ACT to provide for the preservation of timber and stone on the lands of the Onondaga Indian Reservation.

PASSED April 16, 1857.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Preservation of timber, &c.

Penalty.

Publishing of regulations.

§ 1. The Onondaga tribe of Indians, residing on their reservation, in the county of Onondaga, are authorized to make and establish from time to time, such regulations as they may deem necessary, in order to provide for the preservation of timber and stone on the lands of such reservation; and such regulations, when approved by the county judge of the county of Onondaga, shall be binding in law, and whoever shall offend against the same shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by fine not exceeding two hundred and fifty dollars, or by imprisonment in the county jail not exceeding three months, or by both such fine and imprisonment.

§ 2. All regulations made or established pursuant to the provisions of this act, shall be published for four weeks successively in one of the newspapers printed in the county of Onondaga.

CHAP. 206.

AN ACT for the relief of the Onondaga tribe of Indians.

PASSED April 14th, 1858, by a two-third vote.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Medicine and medical aid to be supplied.

§ 1. The board of supervisors of the county of Onondaga are hereby authorized and required to employ annually hereafter, some suitable and competent physician to attend upon and minister to the necessities of sick and indigent Indians of said tribe of Onondaga Indians or transient Indians of other tribes who may be temporarily residing with them; and procure and furnish to them in addition to professional services, such necessary medicines, proper food and attendance as he may deem fit and proper for their condition. And all bills made by such physician under the provisions of this section, for such medical aid, medicines, food and attendance, when properly verified according to law, shall be audited and allowed by the said board of supervisors of said county, and

upon their order to be paid by the county treasurer out of the moneys in his hands specially provided for the purpose in the second section of the act hereby amended.

As amended by Laws of 1861, ch. 134.

§ 2. To carry into effect the provisions of this act, the legislature shall annually appropriate such sum as may be necessary, not exceeding three hundred dollars, to be paid out of the general fund, to the treasurer of the county of Onondaga, on his warrant, to be by him kept as a fund to be applied and paid only as is provided in the first section of this act.

Legislature annually appropriate a sum of money.

§ 3. If in any year the board of supervisors of the county of Onondaga shall deem the appropriation provided in the second section of this act inadequate or insufficient to carry out the intention and aim of this act, they may appropriate, in addition thereto, such sum of money as they may think necessary therefor, out of any moneys which may come into the treasury of said county, arising from that portion of the moneys collected as fines for selling liquor to the Indians and for trespasses upon Indian lands, which now by law is paid over to the chiefs of the Onondaga Indians; but all such moneys shall be directly appropriated by the board of supervisors themselves, upon the recommendation of the supervisor of the town of Onondaga and the agent of the Onondaga Indians, to be applied and disbursed in the same manner and by the same person or physician, as is provided in the first section of this act.

Supervisors may make additional appropriation.

CHAP. 368.

AN ACT for the protection and civilization of the St. Regis Indians.

PASSED April 19, 1858; three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. The governor of this state is hereby authorized to appoint a commissioner for the St. Regis tribe of Indians, residing on the St. Regis reservation, in this state, which commissioner shall hold his office until the next annual meeting of the board of supervisors of Franklin county, or until his successor is appointed, as provided for in the following section.

Commissioner to be appointed.

§ 2. At the ensuing annual meeting of the board of supervisors of Franklin county, said supervisors shall proceed to elect by ballot, a commissioner for the St. Regis tribe of Indians aforesaid, which commissioner shall receive two-thirds of the votes of all the supervisors present, and shall hold his office for the term of three years, and the supervisors shall have the power to elect a successor at any time there-

Supervisors to elect commissioner.

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Duty of
commissioner.

after, to fill any vacancy which may occur by resignation or otherwise.

§ 3. It shall be the duty of said commissioner to receive from the comptroller of this state, the annuities due from the people of this state to the St. Regis tribe of Indians, and portion and pay the same over to the heads of the families belonging to said tribe, by paying to each their equal share of said annuities, and to take from each the necessary receipt therefor; the commissioner shall receive from the people of the state of New York, the sum of four per cent on the amount of money so received and paid out as aforesaid.

[Sections 4, 5, 6, 7, 8, 9, 10, 11, 12 repealed by Laws of 1859, ch. 364, and new provisions added.]

CHAP. 369.

AN ACT to amend an act entitled "An act to authorize the Syracuse and Tully Plank Road Company to construct their road on the highway running through the lands belonging to the Onondaga Indians," passed February sixteenth, eighteen hundred and forty-eight.

PASSED April 19, 1858.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. The second section of said act is hereby amended so as to read as follows:

Indians to
pass toll
free.

All Indians residing on said reservation, or belonging to the Onondaga tribe of Indians, shall at all times be permitted to pass over so much of said road as shall be within the bounds of said reservation, and through the gate erected on said road and within said reservation, with their teams and vehicles, free of any charge or toll, whatever; but in regard to the residue of said road and the gates thereon, they shall stand on the same footing with the other inhabitants of the county of Onondaga.

CHAP. 280.

AN ACT to apply the provisions of the seventeenth section of chapter six hundred and twenty-eight, Session Laws of eighteen hundred and fifty-seven, to Indians in this state.

PASSED April 13, 1859.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Certain pro-
visions of
Laws of

§ 1. The provisions of section seventeen, chapter six hundred and twenty-eight, of the Session Laws of eighteen hun-

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1857 to ap-
ply to Indi-
ans.

dred and fifty-seven, shall apply to all Indians, and to all the Indian reservations in this state; and all Indian officers, empowered either by Indian laws or by the laws of this state to make arrests, shall be arresting officers, under said section, on the reservations to which they belong; and any magistrate, before whom any Indian shall be convicted of intoxication, shall impose the same fine upon said Indian as if he or she were a white person. In all cases the magistrate shall require the arresting officer to testify whether or not the person brought by him was intoxicated when arrested. Indian arresting officers shall receive the compensation by law allowed to constables for similar services, and shall be liable to the same penalty as constables for neglect of duty under the provisions of said section.

Compensa-
tion.

See "Act to suppress Intemperance and to regulate the sale of intoxicating liquors," Laws of 1857, ch. 628.

§ 2. Henry Silverheels, George Seneca, Jack Logan, Job King and Joshua Turkey of the Cattaraugus reservation, and Daniel Shongo, Levi Halftown, Charles Red Eye and Harrison Halftown of the Allegany reservation, are hereby appointed special marshals for the term of two years, and until others are appointed by said Indians, not exceeding five for each reservation, for the purposes of this act.

Special
marshals.

CHAP. 364.

AN ACT to amend the act entitled "An act for the protection and civilization of the St. Regis Indians," passed April 19, 1858.

PASSED April 15, 1859; three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. The fourth, fifth, sixth, seventh, eighth, ninth, tenth, eleventh and twelfth sections of the act entitled "An act for the protection and civilization of the St. Regis Indians," passed April 19, 1858, are hereby repealed, and the said act is hereby amended by adding thereto, after the third section of said act the following sections:

Sections
amended.

§ 4. It shall be the duty of said commissioner to ascertain the number of families belonging to the St. Regis tribe of Indians, and to collect all moneys due or to become due on any of the lands in said St. Regis reservation, which now are or hereafter shall be leased by said tribe or for their benefit, until the said lands shall be divided or apportioned in the manner hereinafter provided, and to pay over the moneys so collected by him at least once in each year, or oftener in his discretion, to the heads of the families belonging to the said tribe, in the manner hereinafter specified for paying their

Duty of
commis-
sioners.

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annuities; and the said commissioner shall be entitled to retain five per cent of such moneys for his services in collecting and paying over the same; but if any person entitled to share in the distribution of such moneys, or to share in the distribution of the annuity moneys of said tribe, shall not appear at the time and place appointed for paying over the same, to receive their share thereof, and shall not, within six months thereafter, demand his or her share of such rent or annuity moneys from said commissioner, then the said commissioner is hereby authorized and directed to supply so much of such moneys, not called for by the persons entitled thereto, as he shall deem necessary and proper, to the temporary support or aid of any indigent members of said tribe, deducting a proportionate amount of the moneys so applied by him from the share of each member of said tribe, so remaining in his hands uncalled for, and to pay over only the remaining part of any such share of said moneys to the person entitled thereto, when called for; and if any such moneys shall remain in the hands of said commissioner, uncalled for until within three days of the next day of payment of rent or annuity moneys, said commissioner shall include the same in the apportionment of said rent or annuity moneys, and pay the same over with such rent or annuity moneys.

Survey of
lands.

§ 5. It shall be the duty of said commissioner to cause a survey to be made of all lands in the St. Regis reservation, held as the common property of the said tribe, including all lands in said reservation heretofore leased by said tribe or for their benefit, and with the aid and assistance of his associates, to divide such lands into tracts or lots and distribute the same to and among said Indians according to the best judgment of said commissioner and his associates, as hereinafter provided; and the said tracts or lots so distributed and apportioned shall thereafter be held by the persons to whom they shall be set apart or apportioned, in severalty and in fee simple according to the laws of this state. There shall, however, be reserved from such apportionment three hundred acres of said lands, which shall be set apart by said commissioner and his associates for school purposes; which land shall be leased or farmed out by such commissioner, and the proceeds thereof shall be by him appropriated and expended for educating said Indians.

Com-
missioner to be
appointed.

§ 6. The said commissioner is hereby authorized and empowered to appoint and associate with him, by writing, under his hand, to be filed in the office of the clerk of Franklin county, two competent persons as his associates, one of whom shall be a competent practical surveyor, to aid and assist him in surveying and apportioning said lands, and from time to time to employ the necessary axe men and chain men, to properly make the said survey. And in case any vacancy shall occur in the office of such associates, by resignation or otherwise, to appoint another or other suitable person or persons to the

place or places so vacant. And said commissioner is hereby authorized to accept the resignation of any person appointed by him as such his associate.

§ 7. The said commissioner, by and with the advice of his associates, is hereby authorized to accept and receive the surrender of any lease heretofore granted, of any of said lands, or of any portion of any of the land so leased, and to execute and deliver to any person making such surrender of the same or other land of the said tribe, or land partly the same and partly other land, for the same time as the unexpired part of the term of the lease surrendered, and at a yearly rent not less for the same quantity of land than that reserved in the lease surrendered, whenever, in the opinion of such commissioner and his associates, the interest of the tribe or the convenience of division and apportionment will be promoted by such surrender or new leasing.

§ 8. The said commissioner is hereby authorized and directed to execute to each of the said Indians to whom any of said lands shall be set apart, a certificate describing the land so set apart, and setting forth that such commissioner, under and by virtue of the provisions of this act, has set apart and apportioned to the person or persons named therein, the land therein described, to have and to hold in severalty and in fee simple, according to the laws of this state; which certificates shall be acknowledged by the said commissioner before the county judge of the county of Franklin, who shall examine the same as to form and manner of execution, and indorse thereon his certificate of acknowledgment and approval thereof. And such certificate of the county judge shall authorize such certificate of said commissioner to be recorded as a conveyance by the county clerk of Franklin county, in the record of deeds for said county, and shall authorize such certificate, or the record thereof, or any duly authenticated copy of such record, to be read in evidence in any of the courts of this state, as a conveyance of the land therein described; and every such certificate of the said commissioner, when so executed, acknowledged, approved and recorded, shall have the effect to convey all the interest of said tribe, and of the people of this state, in the lands therein described, to the person or persons named therein; and when any of such land shall have been leased, such certificate shall have effect as a conveyance of the reversionary interest of said tribe, and all interest of the people of this state in said land, and shall authorize the person or persons to whom such certificate shall be made, and his or her heirs, to collect and receive the rents under the lease thereof. But no land thus conveyed to any member of said tribe, nor any interest therein, shall be alienable by the person or persons to whom it is set apart, nor by the heirs of such person or persons, for twenty years after the apportionment thereof, except upon conveyance or lease approved as to its consideration, or the rent reserved by

Leases to
be received,
&c.

Commis-
sioner to
execute
certificate,
&c.

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the commissioner for said tribe, and upon consent of the commissioners of the land office, which approval and consent shall be indorsed on such conveyance or lease, before any deed or other instrument shall have any effect to convey any of said lands or any interest. And no such lands shall be subject to any incumbrance or lien, by judgment or mortgage or otherwise, for twenty years after the apportionment thereof, unless the same shall have been conveyed by the person or persons to whom it shall be set apart, or his, her or their heirs, by approval of the commissioner for said tribe, and with the consent of the commissioners of the land office, to some person other than a member of said tribe.

Certificates
to be depos-
ited with
county
clerk.

§ 9. The said commissioner shall, immediately after his certificates of apportionment have been acknowledged and approved by the county judge, deposit such certificates in the office of the clerk of the county of Franklin for record; and said county clerk shall be entitled to receive the sum of fifty cents and no more for recording such certificate, but the county judge shall receive no fee for such acknowledgment and certificate. The said commissioner shall be entitled to retain from the annuity moneys of each and every of said Indians to whom any of said lands shall be set apart, the sum of one dollar, to pay for such certificate and the recording thereof, and such sum shall include all expenses of such certificate and recording the same.

Census to
be taken.

§ 10. It shall be the duty of said commissioner, with the aid of his associates, to ascertain, on or before the first day of August, eighteen hundred and fifty-nine, by taking a census, and from the best information they can obtain, the number of individual members of said St. Regis tribe of American Indians. And each member of the said tribe who shall be living on the first day of October, one thousand eight hundred and fifty-nine, shall be entitled to one equal share of the lands belonging to said tribe, quantity and quality relatively considered, to be apportioned as follows: To each male head of a family as many such shares as there are members of such family, including the father, mother, and minor children of such father, and to each other member of the tribe not included in such families as above defined, one share; but any person who shall receive any share in the apportionment of said lands shall not inherit any interest in any of such lands which shall be set apart to the parent of such person, on account of any minor child or children, when such minor child or children shall be living at the time of the death of the parent, or shall have a child or children living, but such person shall inherit, in common with his or her co-heirs, the share or shares of his or her parents, and the share or shares of any deceased minor child or children who shall not have a child or children then living to inherit such share or shares; and in all other respects the said lands shall descend and be inherited according to the general laws of this state.

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Married
women,
rights of.

§ 11. Married women in the said tribe shall have the same right of dower in the lands of their husbands, and the same rights to hold and dispose of property separate from their husbands, as are or may be possessed by married women under the general laws of this state.

Actions, &c.

§ 12. The said commissioner is hereby authorized, in the name of the people of the state of New York, to bring any action or actions for the recovery of any money now due, or to become due, to the said Indians, or to any one or more of them; and also to bring any action or actions for any trespass committed by any person on land possessed or owned by any one or more of said Indians, or for the recovery of the possession or value of any property belonging to said Indians, or to any one or more of them, which has been or hereafter shall be wrongfully detained or converted, and for recovery of damages for any such wrongful detention or conversion upon security for payment of costs of any such action being given to his satisfaction; and all moneys and personal property recovered in any such action shall, after deduction of the costs and expenses thereof, be paid or delivered over to the person or persons for whose benefit such action shall be commenced. The members of the said tribe shall also, after the division and apportionment of the said lands, as herein provided, in their own right and names, be entitled to all the civil remedies as between each other, and as against persons not members of the tribe, for trespasses upon, and injuries to their lands and other property, and to recover possession of the same, or any right or interest therein, and shall have the same rights and remedies for the recovery of rents, and for recovery of possession of demised premises which they would or could possess if citizens of this state.

Roads to be
laid out.

§ 13. The said commissioner, with the aid and advice of his associates, shall survey and lay out upon said lands all such roads as shall be necessary for convenience of approach to and departure from the several parcels of land set apart to the members of said tribe, which roads shall be of the width of three rods and shall be included in the apportionment of said lands, and in the description of the several lots of lands lying adjacent thereto or through which they shall run; but such roads shall not be public highways for any other purpose than for ingress and egress to and from the said several lots or parcels of land until the same shall be laid out and the damages for opening and laying out the same assessed and paid in the manner now prescribed by law for other highways, and whenever any such roads shall be laid out and opened as a public highway, the damages assessed therefor shall be the same as though there had been no such road, and shall be paid to the persons in the description of whose lands such road shall be included, or to their heirs or assigns.

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Map of
lands to be
filed.

§ 14. It shall be the duty of said commissioner and his associates to make, sign and file in the office of the clerk of the county of Franklin, a map of the said lands as by them surveyed, showing the division of such lands into lots or parcels, and the several roads by said commissioner laid out upon said lands, and to make, sign and file a copy of such map in the office of the state engineer and surveyor.

Compensa-
tion of com-
missioner.

§ 15. The said commissioner shall receive the sum of four dollars per day and his necessary expenses, and his first associate who shall be a competent practical surveyor, shall receive the sum of five dollars per day, and his other associate the sum of three dollars per day, for each day actually and necessarily spent in the performance of their respective duties under the provisions of this act, so far as the same relate to a division of said lands.

Report of
com mis-
sioner.

§ 16. It shall be the duty of said commissioner to make a report to the comptroller of this state, annually, on or before the first day of December, in each year, and oftener in his discretion, of all his proceedings under this act. He shall also keep a correct account of the time actually and necessarily spent by him in the performance of his duties, and of the expenses by him incurred in the employment of chain men and axe men, and interpreters and otherwise, also of the time so spent by each of his associates, which account shall be sworn to by said commissioner, and audited by the comptroller of this state, and the sum allowed, together with the percentage allowed, by the third section of the act hereby amended, shall be paid by the treasurer, on the warrant of the comptroller of this state; and the sum of one thousand dollars, or so much thereof as may be necessary, is hereby appropriated for the purpose of carrying out the provisions of this act and of the act hereby amended, which are not hereby repealed.

Bond, &c.

§ 17. Any such commissioner, before entering on the duties of his office, shall make and execute a bond to the people of this state, with good and sufficient sureties, in a sum not less than five thousand dollars, conditioned that he will faithfully perform the duties of his office, which bond shall be approved by the county judge of the county of Franklin, and filed in the office of the secretary of state.

§ 18. All statutes now in force authorizing the appointment or election of trustees for the said tribe, and all acts, and rules and regulations inconsistent with this act are hereby abolished.

§ 19. No Indian shall be obliged to accept under the provisions of this act the land allotted to him, and all Indians declining to receive certificates for such allotment shall continue as now, to hold their lands in common.

CHAP. 374.

AN ACT granting the peace makers on the Cattaraugus and Allegany reservations exclusive jurisdiction over actions for divorces among the Indians on said reservations, and to hear and determine actions between Indians involving the title to real estate on said reservations.

PASSED April 15, 1859.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. The peace makers of the Allegany and Cattaraugus reservations, in this state, shall have exclusive jurisdiction to grant divorces as between Indians residing on said reservations, with the right of appeal to the council by any party aggrieved.

Exclusive jurisdiction to grant divorces.

§ 2. The said peace makers shall also have exclusive jurisdiction to hear and determine all questions and actions between individual Indians residing on said reservations, involving the title to real estate on said reservations, with the right of appeal to council by any party aggrieved.

To hear and determine differences between Indians.

CHAP. 491.

AN ACT to relieve the Tonawanda band of Seneca Indians from certain taxes on the Tonawanda reservation, and to prevent intrusions thereon.

PASSED April 17, 1860, by a two-third vote.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

[Sections 1, 2, 3 temporary.]

§ 4. No tax shall hereafter be assessed or imposed on any part of the said Tonawanda reservation, which shall be owned or occupied by the said Tonawanda band of Indians, for any purpose whatever, so long as the same remains the property of the said Tonawanda band of Indians; and all acts of the legislature of this state, conflicting with the provisions of this section, are hereby repealed.

No tax to be hereafter assessed upon lands owned or occupied by Tonawanda Indians.

§ 5. A warrant to remove any trespassers or intruders, or persons other than Indians, who may settle or reside upon any lands in said reservation, as well those lands located in the counties of Niagara and Erie, as those which are located in the county of Genesee, may be issued as now provided by law, by any justice of the supreme court, residing in any county adjoining said reservation, and by the county judge of the county of Genesee, and either of them; which officers are

Warrants for removal of trespassers or intruders may be issued by any justice of the peace.

PART I.

hereby authorized and empowered to hear complaints of such settlement or residence, trespasses and intrusions, and to receive proof thereof; and it shall be the duty of the district attorney of the county of Genesee, to make such complaints in the manner prescribed in the act of the legislature of this state, entitled "An act respecting intrusions on Indian lands," passed March thirty-first, eighteen hundred and twenty-one; and the sheriff of the county of Genesee is hereby authorized and empowered to execute any warrant issued pursuant to this section.

CHAP. 283.

AN ACT for the protection and improvement of the Tonawanda band of Seneca Indians, residing on the Tonawanda Reservation in this State.

PASSED April 17, 1861; three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Officers to
be elected.

§ 1. The male Indians belonging to the Tonawanda band of Seneca Indians, and residing on the Tonawanda Reservation in this state, of the age of twenty-one years and upwards, may assemble at one of their council houses, on said reservation, on the first day of June, A. D. one thousand eight hundred and sixty-one, and, by plurality of votes, elect the following officers: three peace makers, one clerk, one treasurer, and one marshal. The said officers shall all be chosen from Indians, who are members of said Tonawanda band, and the said peace makers shall be selected from the chiefs of said band residing on said reservation. The most aged member of the peace makers present, when official business is transacted by them, shall be the presiding officer. At the first election held under this act, a presiding officer and a clerk shall be chosen by those present at the meeting; but at all subsequent elections the oldest peace maker present, and clerk last chosen, shall be the president and clerk to preside over and keep the minutes of the proceedings and result of the elections. In case of the absence of the peace makers and clerk, those present at the meeting shall choose a president and clerk for such meeting. The officers hereinbefore named shall be chosen by ballot, or by ayes and noes, upon nomination by an elector.

Challeng-
ing vote.

§ 2. If any person offering to vote at such election shall be challenged as unqualified, the presiding officer shall determine upon his right to vote, from the examination on oath of the person offering to vote, or of any other Indian or Indians, which oath the presiding officer is authorized to administer.

Terms of
officers.

§ 3. The officers thus elected shall hold their offices for one year, commencing on the first day of July following such

election. If any vacancy shall happen, any chief of said band may, within eight days thereafter, call a special meeting of the chiefs of said band residing on said reservation to be held at one of their council houses, by leaving a notice of such meeting with said chiefs, or at their several places of residence on said reservation, five days before the time at which such meeting shall be convened, specifying the time and place of such meeting. A majority of the chiefs present shall choose a clerk for the meeting, and elect officers to supply such vacancies.

§ 4. There shall be a book provided by said band, to be called the register of elections, and a certificate of the election of any officer under this act shall be entered in such register, and be signed by the president and clerk of said meeting, and shall be evidence of such election.

Register of elections.

§ 5. The treasurer shall, within thirty days after his election, give security to the said Tonawanda band of Seneca Indians, in such form and amount as the peace makers shall approve, for the faithful performance of the duties of his office. For any breach of the conditions of the said security an action may be maintained in any court of this state, in the name and for the benefit of the said Tonawanda band of Seneca Indians, in the manner provided by the laws of New York, for the breach of official bonds given by any county treasurer. The treasurer, after giving security as aforesaid, shall receive all moneys belonging to said band, which shall be deposited with him pursuant to any resolution of the chiefs of said band, duly adopted in council and recorded. He shall not pay out any of said moneys except upon the warrant of the presiding officer and clerk of a council of the chiefs, at which an act of appropriation of such money shall have been duly made by a majority of votes and recorded. The treasurer shall receive such compensation as the chiefs in council assembled shall determine.

Treasurer to give security.

Treasurer to receive moneys.

§ 6. The clerk shall have the custody of all the books, papers, and records belonging to the said band; he shall be furnished by the chiefs with a book of records at the expense of the band, in which he shall enter all the proceedings and elections of any annual or special meetings of said Indians; and all orders, rules, regulations, and certificates made or granted by the chiefs in council, and for that purpose shall attend the meetings of the said Indians, and the councils of the chiefs, and shall be their secretary; all orders of the chiefs for the payment of any money, shall be certified by the presiding officer and the clerk to have been duly made, before the same shall be paid by the treasurer, and shall be retained by the treasurer as his vouchers. Every order, certificate, or other matter, certified by the clerk to be true extracts from his minutes, shall be competent evidence thereof; the clerk shall receive such compensation for his services, as shall be

Clerk's duties.

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Authority
of peace
makers.

1b.

When
peace
maker can-
not act.

Persons
dissatisfied,
&c.

allowed by the chiefs in council, not exceeding fifty dollars in any one year.

§ 7. The peace makers of said reservation shall have authority to hear and determine all matters, disputes, and controversies between any Indians residing upon said reservation, whether arising upon contracts or for wrongs, and particularly for any encroachments or trespass on any land cultivated or occupied by any one of them, and which shall have been entered and described in the clerk's book of records; but they shall not take cognizance of any claim founded upon any debt or demand originally contracted with a white man. They shall cause the defendant to be brought before them by the marshal, at such times and places as they shall appoint, and shall publicly hear the allegations and proofs of the parties, and make known their determination to them. They may issue orders or notices for the appearance of witnesses, and may compel their appearance by attachment and by fine, for not appearing, in the same manner as provided by law in relation to justices of the peace; they may administer oaths to witnesses, and may examine any party on oath, to be administered by them in any case where the opposite party shall require such examination. In case any party shall fail to comply with the determination of the peace makers within the time prescribed by them, they shall cause the same to be entered in a book to be provided by the chiefs for that purpose, and the party in whose favor such determination may be made shall be entitled to recover the sum awarded in an action before any justice of the peace of the county, in which a copy of such determination, certified by the peace makers, shall be conclusive evidence of the right of recovery, and the same proceedings shall be had therein, and executions shall be awarded in the same manner as in suits between white persons. But the peace makers shall in no case award more than one hundred dollars, exclusive of costs, in favor of any party, in any one complaint or suit. Any two peace makers shall be competent to perform any duties and exercise any powers herein assigned to the peace makers of said reservation.

§ 8. No peace maker shall act in any case in which he is related by blood to either of the parties within the fourth degree by the common law, or have any interest in the controversy, and when such relationship or interest in any two peace makers is established to the satisfaction of the other, he shall associate with him any two chiefs residing on the reservation, not related to the parties as hereinbefore mentioned, and not having any interest in the controversy, for the hearing and determination of the suit, and such peace makers and the chiefs so appointed, or the majority of them, shall have all the powers and authority herein conferred upon the peace makers in relation to such suits.

§ 9. Any party dissatisfied with the determination of any tribunal so constituted, or of the peace makers in any suit,

may appeal therefrom to a jury of six chiefs, to be selected as follows: Upon giving security to be approved by the peace makers to pay the amount that shall be awarded by such jury, the tribunal whose decision is appealed from, shall direct the marshal to summon twelve chiefs, to be designated by such tribunal, to appear at a time and place to be specified, not more than ten days thereafter, to determine such appeal; on the appearance of the chiefs so summoned, six of their number shall be drawn by lot to hear such appeal; if it be established to the satisfaction of the tribunal which summoned the said chiefs, that any of them are related to either of the parties as hereinbefore named, or are interested in the controversy, they shall be set aside, and other chiefs shall be drawn instead of them. The jury thus constituted shall hear the appeal, examine the witnesses and parties on oath, if required, in the same cases and in like manner as herein provided, in respect to the peace makers, and the determination made by them, or a majority of them, shall be conclusive; and shall be entered in the book kept by the peace makers, and may be enforced in like manner and upon like evidence as in the case of a determination by the peace makers. The chiefs hearing such appeal, shall each be entitled to receive twenty-five cents for their services, to be paid in the first instance by the party appealing; in their final determination they shall direct which party shall pay the costs and expenses of the suit and of the appeal.

Jury.

§ 10. The peace makers shall not receive any fees for their services, to their own use, but all such fees shall be paid to the treasurer of the said band for its use; and in every controversy before them, the costs shall be paid by the party against whom the determination shall be made, which costs shall consist of the fees of the marshal as herein provided, and fifty cents each for the attendance of the peace makers at any hearing of the parties, and if the same shall be adjourned, twenty-five cents each for their attendance on the first appearance of the parties; the costs allowed shall be ascertained and specified by them in their determination.

Peace makers not to receive fees.

§ 11. There shall be allowed to each of the peace makers, by the chiefs in council, an annual compensation, not exceeding fifty dollars in any one year, to be paid semi-annually by the treasurer.

Annual compensation to peace makers.

§ 12. The marshal shall execute all orders, summons, and process issued or given to him by the peace makers, or by any tribunal created according to the provisions of this act, and shall be entitled to receive for his services the same fees as are allowed by law to constables in courts held by justices of the peace.

Marshal.

§ 13. For any demand or right of action which any Indian of said band may have against any other Indian, and which, according to the provisions of this act, exceeds the amount which may be awarded by the peace makers, actions may be

Action in courts of the state.

PART I.

maintained and prosecuted in the courts of this state in the same manner and with the like effect as between white citizens.

Names of chiefs.

§ 14. The names of the chiefs of said band shall be entered by the clerk in the book of records, and if the fact of their being chiefs shall be disputed by any other chief, such fact shall be determined by the chiefs in council; but this provision shall not be construed to authorize them to depose any such chief, or to determine upon the propriety or expediency of entering his name, except upon the determination of four-fifths of all the chiefs of said band.

False swearing.

§ 15. Any willful false swearing by any person to whom any oath may be administered, according to the provisions of this act, shall be deemed perjury, and punished as such in the manner provided in the laws of this state; and any person who shall unlawfully and corruptly procure such false swearing shall be deemed guilty of subornation of perjury, and shall be punished as provided by the laws of this state.

No land to be appropriated by any Indian without consent, &c.

§ 16. No land within the said reservation not already cultivated and improved, or under fence, shall hereafter be appropriated by any Indian to his own use, without the consent of the chiefs in council, whose duty, however, it shall be, on application, to allot and set apart for any Indian or any Indian family, so much wild land as the chiefs shall deem reasonable, and an equitable proportion, in reference to the whole number of Indians not possessing lands. The description of such lands shall be submitted by the respective claimants to the chiefs in council assembled, and shall be approved by the council before they shall be recorded.

Lands to be described.

§ 17. Lands on the said reservation which are appropriated by any Indians or family to their own use, and cultivated and improved by them, shall, within two years after this act takes effect, be described by the person or persons claiming the same, with convenient certainty, and be entered in the books of record kept by the clerk of the said Indians, and if not so entered, the claimant thereof shall not be entitled to maintain any suit under the provisions of this act, for encroaching or trespassing thereon.

Indian may sell certain land.

§ 18. Any Indian residing on the said reservation, having land allotted to him by the chiefs, or entered as herein provided, may sell, for his own benefit, any timber or trees, or stone or plaster on that portion of such land which he shall actually and in good faith clear for the purpose of cultivation. But no white person shall, under pretence of being hired by any Indian, or any other pretence, be employed in removing any timber, or wood, or stone, or plaster from said reservation, or cutting down any trees or quarrying for that purpose.

Indian may make shingles, &c.

§ 19. Any Indian residing on the said reservation, may, without the aid or assistance of any white man, manufacture shingles or staves from any timber or any trees growing upon any wild land therein, not allotted to, or entered by any other

Indian, or being or growing upon any land allotted to or entered by him, and may sell and dispose of the same for his own benefit. But no white person shall, under the pretence of being hired by any Indian, or any other pretence, be employed in any such manufacture, or in removing any timber, or cutting down any trees for that purpose. But before any Indian shall cut, or remove any wood, trees, or timber from any wild land not allotted to him, he shall obtain a permit therefor from a council of chiefs duly assembled, which shall be signed by the presiding officer and clerk of such council.

§ 20. No timber being on any part of said reservation, no trees growing thereon, nor any manufacture thereof, shall be sold or disposed of by any individual Indian or Indians, except as hereinbefore provided; and every such sale or disposition shall be absolutely void. Any sale or disposition of such timber or trees, being or growing upon any wild land on the said reservation, made by the chiefs in council, shall be for the benefit of the said band of Indians, and the proceeds of any such sale or disposition shall belong to and be paid into its treasury. And the attorney for the said Indians shall be authorized to prosecute for the price of any timber or trees unlawfully sold for the benefit of the Tonawanda band of Seneca Indians, and to recover the amount thereof from any person who shall have received the same. Timber.

§ 21. The proper action for the benefit of the said Tonawanda band of Seneca Indians may be prosecuted and maintained by the attorney for the said Indians, for any timber or trees, or the manufacture thereof, sold, taken, or carried from the said reservation, in any other case, than as herein provided and allowed, and shall recover in such action double the value of the timber, trees, or article manufactured from them, so sold, taken, or carried from the said reservation. Attorney for said Indians to prosecute, &c.

§ 22. The district attorney for the county of Genesee, shall be the attorney of the said Tonawanda band of Seneca Indians. He shall, from time to time, advise the said Indians respecting controversies between themselves, and between them, or any of them, and any other person; he shall prosecute and maintain all such actions, suits, and proceedings for them, or any of them, as he may find necessary and proper; and it shall be his duty, on the written complaint of a majority of the chiefs of said band, when any trespass has been committed on the lands of said reservation, or any timber, wood, or logs has been cut or carried away, or converted by any person, not Indian, to his own use, immediately to commence the proper suits for the recovery of such property, or of damages for any such injury. He shall at all times, when requested by them, or by any chief, advise them in relation to their affairs. All suits commenced and prosecuted under the provisions of this act shall be in the name of the people of the state of New York, and for the benefit of said Tona- District attorney of Genesee county.

PART I.

wanda band of Seneca Indians, and in case it shall be necessary to execute any bond for the prosecution or maintenance of any suit or proceedings in behalf of the said Indians, or any of them, the said attorney may execute the same in the name and behalf of the said Tonawanda band of Seneca Indians, who shall be bound thereby as any citizen may be bound by his lawful agent and attorney in fact, and all sums recovered in any action, brought by the said attorney, after deducting such costs and expenses as shall be certified by the judge before whom the case was tried and judgment rendered, shall be paid over to the treasurer of the said Tonawanda band of Seneca Indians, if there be one, and if there be none, then to such person as shall be appointed to receive the same by a majority of the chiefs of said band in council assembled, such appointment to be certified to by the presiding officer and clerk of said council. In every suit or proceeding authorized by this act, any individual Indian of said band, may, if otherwise competent, be received and examined as a witness on behalf of the said Tonawanda band of Seneca Indians, notwithstanding his being a member of the said band.

Who may
lay out
roads, &c.

§ 23. The chiefs of said band of Indians, in council assembled, may determine on the laying out of roads and highways, and working the same; and may make by-laws to regulate such work, and also for regulating, protecting, and improving their common lands, and for regulating fences, and preventing trespass by cattle or otherwise, and may provide a penalty not exceeding five dollars for violating or disobeying any such regulation or by-law.

Cultivation
of lands,
&c.

§ 24. No person or persons, other than Indians, shall cultivate any lands within said reservation on shares, or under any lease thereof, or other contract, providing for the removal of any of the products of said land, by such person or persons as a reward for cultivating the same; but the crops on said land shall be deemed to belong to the Indian entitled to cultivate the same.

§ 25. The proportionate share of said band to the annuity of five hundred dollars agreed to be paid by the state of New York, under a treaty dated twelfth September, eighteen hundred and fifteen, shall hereafter be paid by the treasurer of this state, under the warrant of the comptroller, to the treasurer of said Tonawanda band of Seneca Indians. Their proportionate share will be determined by the ratio that their numbers bear to the whole number of Senecas residing in other portions of this state having an interest in the annuity.

CHAPTER XXVII.**Noxious Weeds.****CHAP. 100.**

AN ACT to provide for the destruction of Canada thistles, and other noxious weeds, on the banks of the canals, railroads and turnpike roads.

PASSED April 21, 1847.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. It shall be the duty of the superintendents of canals, to cause all Canada thistles and other noxious weeds, growing on the banks and sides of the canals, to the width owned by the state, to be cut down twice in each and every year, once between the fifteenth day of June, and the first day of July, and once between the fifteenth day of August and the first day of September.

Duty of superintendents of canals.

§ 2. If the said officers shall refuse or neglect to cause the same to be cut at the times as aforesaid, it shall be lawful for any person or persons, to cut the same between the first and fifteenth days of July, and between the first and fifteenth days of September, in each and every year, at the expense of the superintendents having charge of the sections on which such thistles and noxious weeds shall be so cut, at the rate of one dollar per day for the time occupied in so cutting, to be recovered in any court of justice in this state.

Provision in case of refusal or neglect.

§ 3. It shall be the duty of the several railroad corporations and turnpike road corporations within this state, to cause all Canada thistles and other noxious weeds growing on any lands owned or occupied by such corporations, to be cut down twice in each and every year, once between the fifteenth day of June and the first day of July, and once between the fifteenth day of August and the first day of September.

Duties of railroad and turnpike companies.

§ 4. If the said corporations, or any or either of them, shall neglect to cause the same to be cut down, at the times in the third section of this act mentioned, it shall be lawful for any person to cut the same, between the first and fifteenth days of July, and between the first and fifteenth days of September in each year, at the expense of the corporation on whose lands said Canada thistles or other noxious weeds shall be so cut, at the rate of one dollar per day for the time so occupied in cutting, to be recovered in any court of justice in this state.

Provision in case of neglect.

GENERAL STATUTES
OF THE
STATE OF NEW YORK; &C.

PART II.

RIGHTS OF PROPERTY AND OF PERSONS.

CHAPTER I.

Real Property.

CHAP. 174.

AN ACT in relation to certain trusts.

PASSED April 15, 1839.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. All deeds of trust in relation to real and personal estate executed and delivered prior to the first day of January, eighteen hundred and thirty, to any persons in trusts for any united society of the people commonly called Shakers, shall be valid and effectual to vest in the trustees the legal estates and interests purported to be conveyed by such deeds, to and for the uses and purposes declared therein, or declared by any declaration of trusts executed by such trustees in the same manner and to the same effect as before the first day of January, eighteen hundred and thirty; and such legal estate and trusts, and all the legal authority with which the original trustees were vested by virtue of their appointment and con-

Certain deeds of trust for any Shaker society valid.

Estates may be continued.

PART II.

ferred powers, shall forever descend in regular succession to their successors in office and trust, who in conformity to the constitution of said society have been duly chosen and appointed.

As amended by Laws of 1849, ch. 373.
27 B., 386; 17 B., 105.

Such trusts
may be
created
hereafter.

Limitation
of value of
property.

§ 2. Trusts of real and personal estate for the benefit of any United Society of the people called Shakers, may hereafter be created for the use of the members of any such society, according to the religious constitution of such society; and the legal estates of any property so held in trust shall be vested in the trustees and in those to whom such property may be transmitted in trust by the appointment of any such society, so long as may be required for the objects and purposes of such trusts. But no society shall become beneficially interested in any real or personal property, or acquire any equitable right or interest in any such property, either directly or indirectly, the annual value or income of which after deducting necessary expenses, shall exceed twenty-five thousand dollars, on pain of forfeiture of the privileges conferred by this act: nor shall any trustee be a trustee of more than one such society at the same time.

As amended by Laws of 1852, ch. 203.

Meaning of
"society."

§ 3. The word "society," for the purpose of the preceding section, shall be construed and understood to mean and include all persons of the religious belief of the people called Shakers, resident within the same county.

Right to re-
peal.

§ 4. The legislature may at any time alter, modify or repeal this act.

CHAP. 184.

AN ACT in relation to trusts for the benefit of the meetings of the religious society of Friends.

PASSED April 17, 1830.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Former
trusts for
Friends,
valid.

§ 1. All deeds or declarations of trusts of real or personal estate, heretofore executed and delivered to any person or persons, in trust, or for the use and benefit of any meeting of the religious society of Friends, and the trusts thereby created or declared, shall be valid; and the legal estates may be transmitted, and the trusts so created or declared may be continued and pursued, so long as may be required for the purposes of the trusts, by conveyances from the trustees named in such deeds to other trustees appointed by such meeting, and by conveyances from them to others appointed in like manner or otherwise, according to the directions of such meeting.

31 B., 563; 27 B., 387; 17 B., 106.

§ 2. Trusts of real or personal estate, for the benefit of any meeting of the religious society of Friends, may be hereafter created for the use of such meeting, according to the regulations and rules of discipline of said society; and the legal estate of any property so held in trust shall be vested in the trustees, and in those to whom such property may be conveyed in trust, by the appointment of any such meeting, so long as may be required for the objects and purposes of such trusts: but nothing contained in this act shall be so construed as to impair or diminish the rights of any person, meeting or association of persons, claiming to be a meeting of the religious society of Friends, which such person, or meeting or association of persons claiming to be a meeting as aforesaid, had either in law or equity to or in any real or personal estate, held in trust for the use and benefit of any meeting of the said religious society, prior to the division which took place in said religious society at the yearly meeting held in the city of New York, in the month of May, in the year of our Lord one thousand eight hundred twenty-eight; and nothing in this act contained shall authorize any real or personal estate to be held in trust for any meeting of such society, the annual value or income of which shall exceed five thousand dollars.

CHAP. I.
Such trusts
may be
hereafter
created.

Proviso.

CHAP. 318.

AN ACT authorizing certain trusts.

PASSED May 14, 1840.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. Real and personal property may be granted and conveyed to any incorporated college or other literary incorporated institution in this state, to be held in trust for either of the following purposes:

Property
may be
granted to
certain lit-
erary insti-
tutions in
trust.

1. To establish and maintain an observatory.
2. To found and maintain professorships and scholarships.
3. To provide and keep in repair a place for the burial of the dead; or
4. For any other specific purposes comprehended in the general objects authorized by their respective charters. The said trusts may be created, subject to such conditions and visitations as may be prescribed by the grantor or donor, and agreed to by said trustees, and all property which shall hereafter be granted to any incorporated college or other literary incorporated institution in trust for either of the aforesaid purposes, may be held by such college or institution upon such trusts, and subject to such conditions and visitations as may be prescribed and agreed to as aforesaid.

PART II.
To corporations of cities or villages.

§ 2. Real and personal estate may be granted and conveyed to the corporation of any city or village of this state, to be held in trust for any purpose of education, or the diffusion of knowledge, or for the relief of distress, or for parks, gardens, or other ornamental grounds, or grounds for the purposes of military parades and exercise, or health and recreation, within or near such incorporated city or village, upon such conditions as may be prescribed by the grantor or donor, and agreed to by such corporation; and all real estate so granted or conveyed to such corporation, may be held by the same, subject to such conditions as may be prescribed and agreed to as aforesaid.

15 B., 147.

For use of common schools.

§ 3. Real and personal estate may be granted to commissioners of common schools of any town, and to trustees of any school district, in trust for the benefit of the common schools of such town, or for the benefit of the schools of such district.

Trusts, how long to continue.

§ 4. The trusts authorized by this act may continue for such time as may be necessary to accomplish the purposes for which they may be created.

CHAP. 261.

AN ACT in addition to the "Act authorizing certain trusts," passed May 14, 1840.

PASSED May 26, 1841.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Devise and bequest in trust to be as valid as a conveyance.

§ 1. Devises and bequests of real and personal property in trust, for any of the purposes for which such trusts are authorized under the "act authorizing certain trusts," passed May 14, 1840, and to such trustees as are therein authorized, shall be valid in like manner as if such property had been granted and conveyed according to the provisions of the aforesaid act.

17 B., 106; 15 B., 147; 9 B., 99, 343.

CHAP. 74.

AN ACT to amend the act, passed May, 1841, authorizing colleges and other incorporated literary institutions to hold real and personal estate in trust, so as to allow the same to accumulate for certain specific purposes.

PASSED April 21, 1846.

The People of the State of New York, represented in Senate and Assembly, do enact as follows :

§ 1. The income arising from any real or personal property granted or conveyed, devised or bequeathed in trust to any incorporated college or other incorporated literary institution, for any of the purposes specified in the "Act authorizing certain trusts," passed May 14th, 1840, or for the purpose of providing for the support of any teacher in a grammar school or institute, may be permitted to accumulate till the same shall amount to a sum sufficient, in the opinion of the regents of the university, to carry into effect either of the purposes aforesaid, designated in said trust.

Income may be accumulated.

CHAP. 432.

AN ACT in relation to the accumulation of the income of certain trust funds.

PASSED April 13, 1855 ; three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows :

§ 1. If any of the principal of any trust fund actually received by any incorporated college, or other incorporated literary institution, or by the corporation of any city or village, or by the commissioners of common schools of any town, or by the trustees of any school district, under any grant, conveyance, devise or bequest, for any of the purposes for which trusts are authorized under the "Act authorizing certain trusts," passed May fourteenth, one thousand eight hundred and forty, and the act in addition to the act authorizing certain trusts, passed May twenty-sixth, eighteen hundred and forty-one, shall subsequently become diminished from any cause; such diminution may be made up by the accumulation of the interest or income of the principal of such trust fund, in accordance with the directions (if any) contained in the grant, conveyance, devise or bequest of such trust fund; and if no directions for that purpose are contained in such grant, conveyance, devise or bequest, then such diminution may be made up in whole or in part by such accumulation,

Diminution of income, how supplied.

PART II.

in the discretion of the trustees of such trust fund; but in no case shall such accumulation be allowed to increase the trust fund, beyond the true amount or value thereof, actually received by the trustees, to be estimated after the deduction of all liens and incumbrances on such trust fund, and of all expenses incurred or paid by the trustees in the collection or obtaining the possession of the same.

CHAP. 396.

AN ACT to repeal chapter ninety-eight of the Laws of eighteen hundred and five, and the subsequent re-enactment thereof.

PASSED April 14, 1860.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Former
acts re-
stricted.

§ 1. Chapter ninety-eight of the Laws of eighteen hundred and five, passed April ninth, eighteen hundred and five, entitled "An act to amend an act entitled 'An act to enable grantees of reversions to take advantage of the conditions to be performed by lessees,'" and section three of chapter thirty-one of the Revised Laws, passed March nineteenth, eighteen hundred and thirteen, being a re-enactment of said chapter ninety-eight of the Laws of eighteen hundred and five, and section twenty-five of chapter one, title four, part two, of the Revised Statutes, being a further re-enactment of the same, shall not apply to deeds of conveyance in fee made before the ninth day of April, eighteen hundred and five, nor to such deeds hereafter to be made.

32 B., 453, 463, 473.

CHAP. 274.

AN ACT to abolish distress for rent, and for other purposes.

PASSED May 13, 1846.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Abolished.

§ 1. Distress for rent is hereby abolished.

14 N. Y., 28.

Repeal of
Revised
Statutes.

§ 2. The twelfth, thirteenth, fourteenth, fifteenth, sixteenth and seventeenth sections of the fourth title of the first chapter of the second part of the Revised Statutes are hereby repealed.

Re-entry,
when and
how to be
made.

§ 3. Whenever the right of re-entry is reserved and given to a grantor or lessor in any grant or lease in default of a sufficiency of goods and chattels whereon to distrain for the

satisfaction of any rent due, such re-entry may be made at any time after default in the payment of such rent, provided fifteen days' previous notice of such intention to re-enter, in writing, be given by such grantor or lessor, or his heirs or assigns, to the grantee or lessee, his heirs, executors, administrators or assigns, notwithstanding there may be a sufficiency of goods and chattels on the lands granted or demised for the satisfaction thereof. The said notice may be served personally on such grantee or lessee, or by leaving it at his dwelling house on the premises.

13 N. Y., 303; 2 N. Y., 183; 32 B., 451; 27 B., 110; 21 B., 648; 18 B., 158; 9 B., 302; 8 B., 502; 2 B., 319; 1 B., 377; 4 D., 374; 3 D., 274.

CHAP. 345.

AN ACT in relation to the rights and liabilities of owners and lessors, and of lessees and occupants of buildings.

PASSED April 13, 1860.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. The lessees or occupants of any building which shall, without any fault or neglect on their part, be destroyed, or be so injured by the elements, or any other cause, as to be untenable and unfit for occupancy, shall not be liable or bound to pay rent to the lessors or owners thereof, after such destruction or injury, unless otherwise expressly provided by written agreement or covenant, and the lessees or occupants may thereupon quit and surrender possession of the leasehold premises, and of the land so leased or occupied.

Tenants need not pay rent in certain cases.

CHAPTER II.

Descent.

CHAP. 547.

AN ACT allowing illegitimate children to inherit real and personal property in certain cases.

PASSED April 18, 1855.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. Illegitimate children in default of lawful issue, may inherit real and personal property from their mothers as if legitimate, but nothing in this act shall affect any right or title in or to any real or personal property already vested in the lawful heirs of any person heretofore deceased.

Illegitimates may inherit from their mother.

8 Brad., 249.

CHAPTER III.**Proof and Recording of Deeds, &c.****CHAP. 222.****AN ACT concerning the Proof and Acknowledgment of Deeds.**

PASSED April 23, 1829.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Acknowledgments
before
mayors,
consuls and
judges of
foreign
places.

§ 1. Every acknowledgment or proof of a deed or mortgage made or taken before the mayor of either of the cities of Philadelphia or Baltimore, or before any consul of the United States resident in any foreign port or country, or before a judge of the highest court in Upper Canada or Lower Canada, and certified by them respectively, shall be as valid and effectual as if taken before one of the justices of the supreme court of this state.

CHAP. 287.**AN ACT providing for acknowledging Powers of Attorney, to be used in Justices' Courts.**

PASSED April 26, 1831.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Powers of
attorney in
justices'
courts.

§ 1. Any written authority to appear by attorney in a justices' court may be acknowledged before any judge of the county courts, justice of the peace or commissioner of deeds; and such authority, purporting to have been so acknowledged, shall be received as prima facie evidence of such authority in any justices' court in this state.

Fees there-
for.

§ 2. The fee for such acknowledgment shall be twenty-five cents, and the officer shall not take the same unless he shall know the person making it; and the certificate of such acknowledgment shall state that the officer knows such person.

CHAP. 279.

AN ACT requiring mortgages of personal property to be filed in the town clerks' and other offices.

PASSED April 29, 1833.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. Every mortgage, or conveyance intended to operate as a mortgage, of goods and chattels hereafter made, which shall not be accompanied by an immediate delivery, and be followed by an actual and continued change of possession of the things mortgaged, shall be absolutely void as against the creditors of the mortgagor, and as against subsequent purchasers and mortgagees in good faith, unless the mortgage, or a true copy thereof, shall be filed as directed in the succeeding section of this act.

Chattel mortgages void unless filed.

17 N. Y., 582; 4 N. Y., 598; 3 N. Y., 311; 31 B., 596; 17 W., 495.

§ 2. The instruments mentioned in the preceding section shall be filed in the several towns and cities of this state where the mortgagor therein, if a resident of this state, shall reside at the time of the execution thereof; and if not a resident, then in the city or town where the property so mortgaged shall be at the time of the execution of such instrument. In the city of New York, such instrument shall be filed in the office of the register of said city. In the several cities of this state, other than the city of New York, and in the several towns in this state in which a county clerk's office is kept, in such office; and in each of the other towns in this state, in the office of the town clerk thereof; and such register and clerks are hereby required to file all such instruments aforesaid presented to them respectively for that purpose, and to endorse thereon the time of receiving the same, and shall deposit the same in their respective offices, to be kept there for the inspection of all persons interested.

How and where to be filed.

25 B., 487; 21 B., 202; 16 B., 46; 13 B., 329; 12 B., 678.

§ 3. Every mortgage filed in pursuance of this act shall cease to be valid as against the creditors of the person making the same, or against subsequent purchasers or mortgagees in good faith, after the expiration of one year from the filing thereof; unless, within thirty days next preceding the expiration of the said term of one year, a true copy of such mortgage, together with a statement exhibiting the interest of the mortgagee in the property thereby claimed by him by virtue thereof, shall be again filed in the office of the clerk or register aforesaid, of the town or city where the mortgagor shall then reside.

Every year.

19 N. Y., 497; 14 N. Y., 72; 13 N. Y., 561; 30 B., 486; 12 B., 534, 678; 8 B., 102; 1 D., 163; 1 H., 473.

PART II.
A copy to
be received
in evidence.

§ 4. A copy of any such original instrument, or of any copy thereof, so filed as aforesaid, including any statement made in pursuance of this act, certified by the clerk or register in whose office the same shall be filed, shall be received in evidence, but only of the fact that such instrument or copy, and statement, was received and filed according to the endorsement of the clerk or register thereon, and of no other fact; and in all cases the original endorsement by the clerk or register, made in pursuance of this act upon such instrument or copy, shall be received in evidence only of the facts stated in such endorsement.

Mortgages
to be num-
bered.

§ 5. The register of the city and county of New York, and the clerk of the city and county of Albany, shall respectively number every such instrument or copy which shall be filed in their offices, and shall enter in books to be provided by them, alphabetically, the names of all the parties to such instrument, with the number endorsed thereon opposite to each name; which entry shall be repeated alphabetically under the name of every party thereto.

Fees.

§ 6. For services under this act, the clerks and registers shall be entitled to receive the following fees: For filing each instrument or copy, six cents; for entering the same in a book as aforesaid, in the said cities of Albany and New York, six cents for every party to such instrument; for searching for each paper, six cents; and the like fees for certified copies of such instruments or copies, as are allowed by law to clerks of counties for copies and certificates of records kept by them.

CHAP. 199.

AN ACT requiring County Clerks to make and keep books of general indices.

PASSED April 18, 1843.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Indices to
be made to
deeds and
mortgages.

§ 1. The clerks of the several counties in this state, and the register of the city and county of New York, in those counties in which general indices of deeds and mortgages have not been made and preserved, according to the act passed April 18, 1826, shall provide proper books for making such general indices, and shall form indices therein in such manner as to afford correct and easy reference to the several books of record in their offices respectively. There shall be one book for deeds and another for mortgages. In each book there shall be made double entries, or two lists of names in alphabetical order. In one shall be set the names of the grantors or mortgagors, followed by the names of their grantees or mortgagees; and in the other, the names of the grantees or mortgagees, followed by the names of the grantors or mortgagors, leaving

proper blanks between each class of names or subsequent entries; and in those counties in which indices were made under the said act of April 18, 1826, and have been preserved, the several clerks shall complete the same by bringing them down to the present time, and in either case, the said clerks shall keep the said indices complete by adding to the lists, as deeds and mortgages shall be sent in to be recorded.

§ 2. Each county clerk is hereby authorized to charge in his account against his county, all necessary expenses which he may incur in the purchase of books for such indices, and at and after the rate of fifty cents for every hundred names which he may enter in such book. Expenses to be paid.

§ 3. The provisions of this act shall not apply to such counties in this state as now have a general numerical index of deeds and mortgages in the office of the clerk of said counties. Exception.

CHAP. 210.

AN ACT to authorize the recording of certain documents therein mentioned.

PASSED April 18, 1843.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

[Sections 1, 2, 3, 4, local and personal.]

§ 5. The copy of any record, or of any recorded deed or instrument, attested and authenticated in such manner as would by law entitle it to be read in evidence, may on proof of the loss of the original and of the record, be again recorded, and such record shall have the same effect as the original record. Copies may be recorded in certain cases.

CHAP. 109.

AN ACT in relation to the acknowledgment and proof of deeds and mortgages.

PASSED April 28, 1845.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. Every acknowledgment or proof of a deed or mortgage, made or taken before the mayor of any city, in the United States, and certified by him, shall be as valid and effectual, as if taken before one of the justices of the supreme court of this state. Mayors of cities may take acknowledgments.

CHAP. 110.

AN ACT in relation to the recording of patents for lands in certain cases.

PASSED April 28, 1845.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Patents
may be re-
corded in
counties.

§ 1. All letters patent issued under the great seal of this state, granting land to any person or persons, in addition to the record thereof made in the office of the secretary of state, may be recorded in the county where the lands granted are situated, in the same manner and with the like effect as any deed regularly acknowledged or proved before an officer authorized by law to take the proof and acknowledgment of deeds, whenever the patentee or owner of such lands shall request the same to be so recorded.

CHAP. 182.

AN ACT to authorize the recording of wills of real estate and of exemplifications of judgment records and decrees in partition suits, and for other purposes.

PASSED May 11, 1846.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Wills may
be recorded
by county
clerks.

§ 1. Any will of real estate which shall have been duly proved in the supreme court, or court of chancery, or before the surrogate of any county in this state, with the proofs taken, on the proof thereof, and the certificate of proof annexed thereto or endorsed thereon, may be recorded in the clerk's office of any county in this state, in the same manner that conveyances of real estate are now authorized to be recorded. Any exemplification of the record of any such will from the office of the clerk of the supreme court, register, assistant register, or clerk in chancery, or surrogate, where the same may be recorded, or from any other office where the same hereafter by law may be recorded, may in like manner be recorded in the clerk's office of any county. The record of such will or exemplification so made as aforesaid, and the exemplifications of such record shall be received in evidence, and shall be as effectual in all cases as the original will would be if produced and proved, and may in like manner be repelled by contrary proof.

Exemplifi-
cations of
judgment,
record, or
decree may
be recorded

§ 2. An exemplification of any judgment record or decree in partition, may in like manner be recorded in the clerk's office of any county of this state in which any lands described

therein may be situated. Such record or an exemplification thereof shall be received in evidence, and shall be as effectual in all cases as the original exemplification would be if produced, and shall be open to the same objections.

§ 3. On recording any such will or exemplification the clerk shall index the same in the indices of deeds, substantially as such clerks are now required to index deeds recorded in their respective offices. Index.

§ 4. Such clerks shall receive for such recording the same fees which shall be from time to time allowed them for the recording of conveyances of real estate; and any executor of a will or administrator with the will annexed who shall procure such will to be recorded in the clerk's office of any county in which the lands devised thereby may be situated, shall be allowed the fees paid by him for such recording in the settlement of his accounts. Fees.

CHAP. 170.

AN ACT authorizing the acknowledgment of conveyances in certain cases to be taken in Mexico before certain officers of the army of the United States.

PASSED April 30, 1847.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. The acknowledgment of any deed, mortgage or other conveyance of any real estate within this state, and of any contract in relation to such real estate, and of any power of attorney authorizing the conveying, mortgaging or otherwise disposing of such real estate, or of making any contract in relation thereto which has been or shall be executed by an officer or soldier of the army of the United States, employed at the time of making such acknowledgment within the territory of the republic of Mexico, may be taken within such territory before, and certified by any major-general, brigadier-general or colonel of the said army, to whom the person making such acknowledgment shall be personally known at the time of making the same. The certificate of any acknowledgment taken and certified by virtue of this act, shall state the place at which it is taken, and the fact that the person making the same is an officer or soldier of the said army, of which facts such acknowledgment shall be presumptive evidence. Every acknowledgment so taken and certified shall have the same force and effect in all respects as if the same were taken and certified within this state by an officer authorized by law to take and certify the same. Deeds, how to be acknowledged by the army in Mexico.

CHAP. 195.

AN ACT to provide for taking the acknowledgments of deeds and other written instruments, by persons residing out of the State of New York.

PASSED April 7, 1848.

The People of the State of New York, represented in Senate and Assembly, do enact as follows :

Proof or
acknow-
ledgment,
how to be
made in
other states

§ 1. The proof or acknowledgment of any deed or other written instrument required to be proved or acknowledged, in order to entitle the same to be recorded or read in evidence, when made by any person residing out of this state, and within any other state or territory of the United States may be made before any officer of such state or territory, authorized by the laws thereof to take the proof and acknowledgment of deeds ; and when so taken and certified as herein provided, shall be entitled to be recorded in any county in this state, and may be read in evidence in any court in this state, in the same manner and with like effect, as proofs and acknowledgments taken before any of the officers now authorized by law to take such proofs and acknowledgments : Provided that no such acknowledgment shall be valid unless the officer taking the same shall know or have satisfactory evidence that the person making such acknowledgment is the individual described in and who executed the said deed or instrument.

When to be
read in
evidence.

§ 2. To entitle any conveyance or written instrument, acknowledged or proved, under the preceding section, to be read in evidence or recorded in this state, there shall be subjoined or attached to the certificate of proof or acknowledgment, signed by such officer, a certificate under the name and official seal of the clerk, register, recorder or a prothonotary of the county in which such officer resides, or of the county or district court, or court of common pleas, thereof, specifying that such officer was, at the time of taking such proof or acknowledgment, duly authorized to take the same, and that such clerk, register, recorder or prothonotary, is well acquainted with the handwriting of such officer, and verily believes that the signature to said certificate of proof or acknowledgment, is genuine.

As amended by Laws of 1856, ch. 61.

CHAP. 69.

AN ACT requiring chattel mortgages to be registered.

PASSED March 1, 1849.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. It shall be the duty of the clerks of the several towns and counties in this state, in whose offices chattel mortgages are by law required to be filed, to provide proper books, at the expense of their respective towns in which the names of all parties to every mortgage, or instrument intended to operate as a mortgage of goods and chattels, hereafter filed by them, or either of them, shall be entered in alphabetical order, under the head of mortgagors and mortgagees, in each of such books respectively.

Mortgages
to be regis-
tered.

18 B., 202

§ 2. It shall be the duty of the said several clerks to number every such mortgage or copy so filed in said office, by endorsing the number on the back thereof, and to enter such number in a separate column in the books in which such mortgages shall be entered, opposite to the name of every party thereto, also the date, the amount secured thereby, when due, and the date of the filing of every such mortgage.

To be num-
bered.

§ 3. The said several clerks for services under this act, shall be entitled to receive therefor the following fees: for filing every such mortgage or copy six cents; for entering the same in books, as aforesaid, six cents.

Fees.

CHAP. 270.

AN ACT to authorize the appointment of commissioners, to take the proof and acknowledgment of deeds and other instruments, and to administer oaths in other states and territories.

PASSED April 10, 1850.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. The governor of this state is hereby authorized to name, appoint and commission so many commissioners in each of the other states and territories of the United States, and in the District of Columbia, and in Canada, as he may deem expedient, provided that the number of commissioners shall at no time exceed ten in any one county. The said commissioners shall continue in office for four years, and shall have authority to take the acknowledgment and proof of the

Governor
may ap-
point and
commis-
sion.

Term of
office, au-
thority, &c.

PART II.

execution of any deed, mortgage, lease or other conveyance of any lands, tenements or hereditaments lying and being in this state, or of any contract, assignment, transfer, letter of attorney, satisfaction of a judgment, or of a mortgage, or of any other writing or instrument under seal, to be used or recorded in this state; also to administer an oath or affirmation to any person or persons who may desire to make such oath or affirmation.

As amended by Laws of 1859, ch. 222.

Their
powers.

§ 2. Any acknowledgment or proof taken in pursuance of the powers, and under the directions and limitations conferred by and mentioned in this act, in manner directed by the laws of this state, with respect to the acknowledgment or proof of deeds, taken by any officer authorized to take such acknowledgment, residing within this state, and certified by any one of said commissioners, whose appointment is authorized by this act, before whom the same shall be taken or made under his hand and official seal; which certificate shall be endorsed on said deed or other instrument mentioned in the first section of this act, shall, when authenticated in the manner hereinafter provided, be entitled to be recorded in any county in this state, and shall have the same force and effect, and be as good and available in law, for all purposes, as if the same had been taken or made before any officer authorized to take such proof or acknowledgment, residing in this state; and any affidavit or affirmation made before any such commissioner, certified and authenticated as aforesaid, may be read in evidence, and shall be as good and effectual to all intents and purposes, as if taken and certified by an officer authorized to administer oaths, residing in this state.

Oath to be
taken by
commis-
sioners and
filed in
office of
secretary of
state.

His seal.

§ 3. Every commissioner appointed by virtue of this act, shall, before he performs any duty, under and by virtue of his said appointment, and of this law, take and subscribe an oath or affirmation, before a justice of the peace, or some other magistrate in the city or county in which he shall reside, well and faithfully to execute and perform all the duties of such commissioner, under and by virtue of the laws of the state of New York; which oath or affirmation shall be filed in the office of the secretary of this state. And every such commissioner shall also, before he enters upon the duties of his office, cause to be prepared an official seal, in which shall be designated his name, and the words, "a commissioner for the state of New York," together with the name of the state or territory, and also of the city or county, within which he shall reside, and for which he shall have been appointed, and shall transmit to and cause to be filed in the office of the secretary of this state, a distinct impression of such seal, taken upon wax or some other substance capable of receiving and retaining a clear impression, together with his signature in his own proper writing.

§ 4. When any deed or other instrument shall be proved or acknowledged, or any oath or affirmation shall be taken before any commissioner appointed by virtue of this act, before it shall be entitled to be used, recorded or read in evidence, in addition to the preceding requisites, there shall be subjoined or affixed to the certificate, signed and sealed by such commissioner as aforesaid, a certificate under the hand and official seal of the secretary of state of this state, certifying that such commissioner was at the time of taking such proof or acknowledgment, or of administering such oath or affirmation duly authorized to take the same, and that the secretary is acquainted with the handwriting of such commissioner, or has compared the signature to such certificate with the signature of such commissioner deposited in his office, and has also compared the impression of the seal affixed to such certificate, with the impression of the seal of such commissioner deposited in his office, and that he verily believes the signature and the impression of the seal of the said certificate to be genuine.

CHAP. III.
Papers acknowledged before commissioners, to be recorded.

§ 5. No commissioner appointed under or by virtue of this law shall be authorized to take the proof or acknowledgment of any deed or instrument, or to administer any oath or affirmation at any place other than within the city or county within which he shall reside at the time of his appointment, and every certificate of any such commissioner to any proof or acknowledgment taken before him, or to any oath or affirmation administered by him, shall specify the day on which or the city or town and county within which the same was taken or administered; and without such specification, the said certificate shall be wholly invalid, inoperative and void.

Acknowledgments, how to be taken.

§ 6. The secretary of state shall be entitled to demand and receive the sum of twenty-five cents for every certificate by him given in pursuance of the fourth section of this act.

Fees of secretary of state.

§ 7. The act entitled "An act to authorize the appointment of commissioners to take the acknowledgment of deeds, or instruments of writing under seal," passed May 13th, 1840, is hereby repealed, and all appointments under or by virtue of said act shall cease, determine and become utterly null and void, from and after the expiration of thirty days after the day on which this act shall take effect; and the secretary of state of this state shall forthwith cause a copy of this act to be forwarded to each of the commissioners appointed under the said act, whose appointment shall not have been previously revoked or superseded.

Repeal.

§ 8. It shall be the duty of the secretary of state of this state, to prepare instructions and a set of forms in conformity with the laws of this state, and to forward the same, together with a copy of this act, to every person who shall be appointed a commissioner under and by virtue of this law.

Instructions to be prepared.

§ 9. No person shall be appointed a commissioner under this act, who is not at the time of his appointment, a resident

Eligibility.

PART II

of the city or county, and state or territory for which he may be appointed.

CHAP. 277.

AN ACT declaratory of the "Act to authorize the recording of wills of real estate, and of exemplifications of judgment records and decrees in partition suits, and for other purposes," passed May 11, 1846.

PASSED June 24, 1851.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Made appli-
cable to
New York.

§ 1. The provisions of the "Act to authorize the recording of wills of real estate, and of exemplifications of judgment records and decrees in partition suits and for other purposes," passed May eleventh, one thousand eight hundred and forty-six, so far as they relate to the clerks of the several counties of this state, are declared to apply to the register of the city and county of New York, with the like effect as to clerks of the other counties of this state, and as if such register had been specifically named in said act.

CHAP. 259.

AN ACT in relation to the proof or acknowledgment of deeds and other conveyances by persons residing out of this state.

PASSED April 15th, 1858.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Deeds, &c.,
how to be
acknow-
ledged.

§ 1. Any deed or conveyance or other written instrument, affecting real estate within this state, proved or acknowledged in any other state or territory of the United States, according to the laws of such state or territory, where the grantor or grantors of such deed or conveyance and the officer before whom the same shall be proved or acknowledged shall be dead; and when such proof or acknowledgment shall be certified as herein provided, may be recorded in any county of the state, and may be read in evidence in any court of this state, in the same manner and with the like effect as though the same had been proved or acknowledged as required by the laws of this state, provided that the death of the grantor or grantors, and of the officer before whom the same shall be proved or acknowledged, shall be proved by the affidavit of one or more persons, sworn to before some officer authorized by law to administer oaths in such state or territory, and certified as herein provided.

CHAP. III.
Certificate
to be an-
nexed, &c.

§ 2. To entitle such deed or conveyance, or other written instrument, to be read in evidence or recorded in this state, there shall be annexed to the certificate of proof or acknowledgment, signed by such officer, a certificate under the name and official seal of the clerk or register of the county in which such officer resided, specifying that such officer was, at the time of taking such proof or acknowledgment duly authorized to take the same, and that such clerk or register is well acquainted with the hand writing of such officer, and verily believes that the signature to said certificate of proof or acknowledgment is genuine, and that such deed or conveyance or written instrument, is proved or acknowledged in all respects, as required by the laws of such state or territory. There shall also be a like certificate of such clerk or register, attached to the jurat or affidavit, proving the death of the grantor or grantors, and of the officer before whom the deed or written instrument was proved or acknowledged, certifying that such officer was, at the time of taking such affidavit or affidavits, duly authorized to take the same, and that such clerk or register is well acquainted with the hand writing of such officer, and verily believes that the signature to such jurat or affidavit is genuine. Such affidavit or affidavits shall be recorded with such deed or other written instrument, and be presumptive evidence of the facts therein stated.

CHAP. 308.

AN ACT to authorize the appointment of Commissioners to take the proof and acknowledgment of deeds, and other instruments, and to administer oaths in Great Britain and France.

PASSED April 17, 1858.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. The governor of this state is hereby authorized to appoint and commission one or more, and not exceeding three commissioners in each of the following cities: London, Liverpool and Glasgow, in Great Britain; in Dublin, Belfast, Cork and Galway, in Ireland; and Paris and Marseilles, in France; who shall continue in office for four years, and until a successor shall be appointed and shall have authority to take the acknowledgment or proof of the execution of any deed or written instrument to be recorded or read in evidence in this state, except bills of exchange, promissory notes, and last wills and testaments; and also to administer an oath or affirmation to any person or persons who may desire to take the same, and to certify the taking of such oath or affirmation, and also to certify the existence of any patent, record, or other document remaining of record in any public office or

Commis-
sioners
may be
appointed
in foreign
cities.

PART II.

Other commissioners may be appointed.

official custody in Great Britain or Ireland or France, and the correctness of a copy of any such patent, record, or other document. The certificate of any one of such commissioners, under his official seal and subscribed by him, in regard to the acknowledgment or proof of the execution of any such deed or written instrument, or the taking of such oath or affirmation, or the existence or correctness of a copy of such patent, record, or document, when authenticated by the Secretary of State, as hereinafter mentioned, shall have the same effect to authorize the recording or reading in evidence of such deed or written instrument, oath or affidavit, patent, record, or document, as is given by law to like certificates made by justices of the supreme court of this state, or to any certificate or exemplification by any officer of this state, of any patent, record, or other document. The governor may, in his discretion, at any time hereafter, appoint a commissioner for any other foreign state or country, who shall have the like powers as the commissioners above named.

As amended by Laws of 1862, ch. 283.

Certificate of secretary of state, &c.

§ 2. Before any such deed or other instrument, oath or affidavit, patent, record or document, shall be entitled to be used, recorded, or read in evidence, in addition to the preceding requisites, there shall be subjoined or affixed to the certificate signed and sealed by such commissioner as aforesaid, a certificate under the hand and official seal of the secretary of state of this state, certifying that such commissioner was, at the time of taking such proof or acknowledgment, or of administering such oath or affirmation, duly authorized to take the same, and that the secretary is acquainted with the handwriting of such commissioner, or has compared the signature to such certificate with the signature of such commissioner deposited in his office, and has also compared the impression of the seal affixed to such certificate with the impression of the seal of such commissioner deposited in his office, and that he believes the signature and the impression of the seal of the said certificate to be genuine.

Oath of commissioner.

§ 3. Every commissioner appointed by virtue of this act, before performing any duty or exercising any power in virtue of his appointment, shall take and subscribe an oath or affirmation before a person authorized to administer such oath or affirmation by the laws of this state, or before a judge or clerk of one of the courts of record of the kingdom or empire in which such commissioner shall reside, well and faithfully to execute and perform all the duties of such commissioner under and by virtue of the laws of the state of New York; and shall also cause to be prepared an official seal, on which shall be designated his name, and the words "commissioner of deeds for the state of New York," with the name of the city for which he shall be appointed; and shall cause a distinct impression of such seal, taken upon wax or some other substance capable of receiving and retaining a clear impres-

Seal of commissioner.

sion, together with his signature, in his own proper writing. and the oath or affirmation above in this section mentioned, duly certified by the person before whom it may be taken, to be filed in the office of the secretary of this state.

§ 4. As often as the term of office of any commissioner appointed by virtue of this act shall expire, or the office shall become vacant by the death, resignation, or removal from the city for which he was appointed, of such commissioner, the governor shall have power to fill the office by new appointment, and the person so appointed shall, upon complying with the provisions of the third section of this act, hold his office by the tenure, and shall possess the powers specified in the first section of this act.

Vacancy.

§ 5. The secretary of state shall be entitled to demand and receive the sum of twenty-five cents for every certificate given by him in pursuance of the third section of this act.

Fees for certificate of secretary of state.

§ 6. It shall be the duty of the secretary of state to forward instructions and forms in accordance with the laws of this state, together with a copy of this act, to each person who shall be appointed a commissioner under and by virtue of this act.

Instructions.

§ 7. The fees of such commissioner, for services under this act, shall be as follows: In Great Britain and Ireland, for administering each oath and certifying the same, and for making each certificate attached to a patent, record, or other document, one shilling sterling; in France, one franc and twenty-five centimes. In Great Britain and Ireland, for taking each acknowledgment or proof of any deed or other written instrument to be recorded or read in evidence, four shillings sterling; in France, five francs; and in all other countries the same compensation as is allowed the commissioners in France.

Fees of commissioners.

As amended by Laws of 1862, ch. 283.

§ 8. A copy of any patent, record or other document, remaining of record in any public office of any foreign kingdom, state or country, when certified according to the form in use in such kingdom, state or country, and also certified according to the first and second sections of this act, may be read in evidence in any of the courts of this state.

Papers may be used in evidence.

§ 9. The certificate of any one of said commissioners annexed to a paper purporting to be certified as in the last section provided, shall be presumptive evidence that it has been certified according to the form in use in such kingdom, state or country.

Certificate, how far evidence.

CHAP. 360.

AN ACT authorizing notaries public of the State of New York to perform the duties now performed by commissioners of deeds.

PASSED April 15, 1859.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Additional powers to notaries.

§ 1. In addition to their present powers, notaries public of this state are hereby authorized to administer oaths and affirmations, and to take the proof and acknowledgments of deeds, mortgages and any other papers for use or record in this state, in all the cases where the same may now be taken and administered by commissioners of deeds, and under the same rules, regulations and requirements prescribed to commissioners of deeds, and such notaries' acts may be performed without official seal.

CHAP. 365.

AN ACT to authorize the discharge of mortgages of record in certain cases.

PASSED April 19, 1862; three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

When mortgage may be discharged on petition of mortgagee.

§ 1. The mortgagor named in, or the owner of any lands described in any mortgage of real estate in this state, which is recorded in this state, and which from the lapse of time is presumed to be paid, may present his petition to the courts mentioned in this act, asking that such mortgage may be discharged of record. Such petition shall be verified; it shall describe the mortgage and when and where recorded, and shall allege that such mortgage is paid; that the mortgagee has, or if there be more than one mortgagee, that all of them have been dead for more than five years, specifying the time and place of his or their death and place of residence at the time of the death; that no letters testamentary, or of administration, have been taken out in this state; the names and places of residence so far forth as the same can be ascertained of the heirs of such mortgagee or mortgagees, and that such mortgage has not been assigned or transferred, and if such mortgage has been assigned, state to whom, and the facts in regard to the same.

Where presented.

§ 2. Such petition may be presented to the supreme court in the county where the mortgaged premises are situate, or when situate in the city of New York to the superior court

thereof, or when situate in the city of Buffalo to the superior court thereof.

§ 3. The court upon the presentation of such petition, shall make an order requiring all persons interested to show cause at a certain time and place, why such mortgage should not be discharged of record. The names of the mortgagor, mortgagee and assignee, if any, the date of the mortgage and where recorded and the town or city in which the mortgaged premises are situate shall be specified in the order. The order shall be published in such newspaper or newspapers, and for such time as the court shall direct. The court may also direct the order to be personally served upon such persons as it shall designate.

Order to
show cause.

Publication
and service
thereof.

§ 4. The court may issue commissions to take the testimony of witnesses, and may refer it to a referee to take and report proofs of the facts stated in the petition. The certificate of the proper surrogate or surrogates that no letters testamentary or of administration, have been issued shall be evidence of the fact; and the certificate of the clerk of the county or counties in which the mortgaged premises have been situate since the date of said mortgage, that no assignment thereof has been recorded, and no notice of the pendency of an action thereon has been filed, shall be evidence that the mortgage has not been assigned or transferred. Upon being satisfied that all the matters alleged in the petition are true, the court may make an order that the mortgage be discharged of record.

Proceed-
ings there-
on.

§ 5. The county clerk upon being furnished with a certified copy of such order and paid the fees allowed by law for discharging mortgages, shall record said order and discharge the mortgage of record.

Duty of
county
clerk.

CHAPTER IV.

Personal Property.

CHAP. 281.

AN ACT to prevent persons from transacting business under fictitious names.

PASSED April 29, 1833.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. No person shall hereafter transact business in the name of a partner not interested in his firm; and where the designation "and company," or "& Co.," is used it shall represent an actual partner or partners.

Fictitious
names for-
bidden.

PART II.
Penalty.

§ 2. Any person offending against the provisions of this act, shall, upon conviction thereof, be deemed guilty of a misdemeanor, and be punished by a fine not exceeding one thousand dollars.

CHAP. 129.

AN ACT to amend title first, chapter four, part second of the Revised Statutes, concerning limited partnerships.

PASSED March 30, 1837.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Certificate,
how to be
acknow-
ledged.

§ 1. The certificate required by the fourth section of title first of chapter four of part second of the Revised Statutes of the state of New York, may be acknowledged or proved, as to the several persons signing the same, before the same persons before whom a conveyance of lands may be now or hereafter acknowledged or proved; and such acknowledgment or proof, shall be made and certified in the same manner as the acknowledgment or proof of the conveyances of lands may be made or certified; and the certificate when so made, shall have the same effect as if it were acknowledged in the manner heretofore required by the law hereby amended.

CHAP. 257.

AN ACT for the relief of partners and joint debtors.

PASSED April 18, 1838.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Compromise may
be made by
one or more
partners.

§ 1. Whenever any copartnership firm shall be dissolved by mutual consent or otherwise, it shall and may be lawful for any one or more of the individuals who was or were embraced in such copartnership firm, to make a separate composition or compromise with any one or all of the creditors of such copartnership firm; and such composition or compromise shall be a full and effectual discharge to the debtor or debtors making the same, and to them only, of and from all and every liability to the creditor or creditors with whom the same is made or incurred by reason of his or their connexion with such copartnership firm.

Debtors
making a
compromise to
take a note
thereof ex-
onerating
them.

§ 2. Every such debtor or debtors making such composition or compromise, shall take from the creditor or creditors with whom he may make the same, a note or memorandum in writing, exonerating him or them from all and every individual liability incurred by reason of such connection with such

copartnership firm, which note or memorandum may be given in evidence by such debtor or debtors under the general issue; in bar of such creditor's right of recovery against him or them; and if such liability shall be by judgment in any court of record in this state, then on a production to and filing with the clerk of such court, the said note or memorandum in writing, duly acknowledged, by the party or parties making the same, in the same manner as satisfaction of judgment is now required by law to be acknowledged, such clerk shall discharge said judgment of record so far as the said compromising debtor or debtors shall be concerned.

As amended by Laws of 1845, ch. 348; 4 B., 93; 1 B., 186; 1 Du., 30.

§ 3. Such compromise or composition with an individual member of a firm shall not be so construed as to discharge the other copartners, nor shall it impair the right of the creditor to proceed at law or in equity against the members of such copartnership firm as have not been discharged. And the member or members of such copartnership firm so proceeded against, shall be permitted to set off any demand against said creditor or creditors which could have been set off had such suit been brought against all the individuals composing such firm; nor shall such compromise or discharge of an individual of a firm, prevent the other members of such firm from availing themselves of any defence at law or equity, that would have been available had not this act been passed, except that they shall not set up the discharge of one individual as a discharge of the other copartners, unless it shall appear that all were intended to be discharged.

Other copartners not affected.

§ 4. Such compromise or composition of an individual of a firm with a creditor of such firm, shall in no wise affect the right of the other copartners to call on the individual making such compromise, for his ratable portion of such copartnership debt, the same as if this law had not been passed.

Liability for debts.

§ 5. The above provisions in reference to copartners of a firm, shall extend to joint debtors, who are hereby authorized individually to compound or compromise for their joint indebtedness, with the like effect in reference to creditors and to joint debtors of the individual so compromising, as is above provided in reference to copartners.

Joint debtors.

CHAP. 176.

AN ACT to amend an act for the relief of partners and joint debtors, passed April 18, 1838.

PASSED March 30, 1849.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. Any creditor or creditors of any copartnership firm or of any joint debtors, may unite with any one or more of the mem-

Petition for the discharge of debtors.

PART II.

bers of any such copartnership firm, or with any one or more of any such joint debtors, in a petition for the discharge of such partner or partners, joint debtor or debtors from his or their debts under and in accordance with the provisions of article third, of title one, of chapter five, of part two of the Revised Statutes, and the discharge of any partner or partners, joint debtor or debtors, in consequence of any such petition, shall have the same force and effect as the note or memorandum in writing mentioned in the act hereby amended, and shall not discharge any copartner or joint debtor, except such copartner and joint debtors as may be designated by the petitioning creditor.

CHAP. 347.

AN ACT in relation to copartnership styles.

PASSED April 11, 1849.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Act of 1833
modified.

§ 1. The act entitled "An act to prevent persons from transacting business under fictitious names," passed April 29, 1833, shall not apply to commercial copartnerships located and transacting business in foreign countries, but they may use their styles or firms of their houses in this state.

CHAP. 400.

AN ACT allowing the continued use of copartnership names in certain cases.

PASSED April 17, 1854; three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Name,
when to be
continued.

§ 1. When any copartnership shall have used or hereafter shall use any copartnership name, and the business conducted by it shall be continued by some or any of the copartners, their assigns or appointees, it shall be lawful to continue the use of such name, provided that on every change of the persons continuing such use a certificate shall be filed and notice published as is hereinafter expressed.

Certificate
to be ac-
knowledg-
ed and pub-
lished.

§ 2. On every change of the person or persons continuing the use of such name, he or they shall sign and acknowledge, before any officer by law authorized to take acknowledgment of deeds, a certificate declaring the person or persons dealing under such name, with their place or places of abode, and file the same with the clerk of the county in which shall be his or their principal place of business, and shall cause the same to be published in a newspaper printed in the town or city in

which shall be such principal place of business, or if none be printed in such town, then in a newspaper printed in the county town, and in the newspaper printed by the printer to this state, for four successive weeks.

§ 3. The county clerk shall keep a register of such firms and names, entering in alphabetical order the name of every firm and of the copartner or copartners thereof, for which registering and filing he shall receive for each firm a fee of one dollar, and an additional fee of ten cents for every name of a copartner beyond two; and the copies of such certificate and registry certified by him, and the affidavit of such publication, shall be evidence. Register of firms.

§ 4. The provisions of this act shall apply only to such firms or copartnerships having business relations with foreign countries, anything in this act in anywise contained to the contrary notwithstanding. Act, to whom to apply.

§ 5. All statutes to the contrary of this act are hereby repealed, as to persons within the purview hereof. Repeal.

CHAP. 414.

AN ACT to amend the Revised Statutes in relation to limited partnerships.

PASSED April 14, 1857.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

[Sections 1, 2, 3 and 4 make amendments to the Revised Statutes which are incorporated into Sections 3, 12, 17 and 23 of article 1, title 1, chap. 4, part 2.]

20 N. Y., 181.

§ 5. This act shall take effect immediately, and shall apply as well to such partnerships existing at the time of the passage hereof, as to those thereafter formed.

CHAP. 276.

AN ACT regulating Suits on Bills of Exchange and Promissory Notes.

PASSED April 25, 1832.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. It shall be lawful for the holder of any bill of exchange or promissory note hereafter to be made, instead of bringing separate suits against the drawers, makers, endorsers and acceptors of such bill or note, to include all or any of the said parties to the bill or note in one action, and to proceed to Suits, how to be brought.

PART II.

judgment and execution in the same manner as though all the defendants were joint contractors.

8 N. Y., 347; 7 N. Y., 284; 14 B., 184; 8 B., 13; 19 W., 642, 643; 1 S. S. C., 66.

[Section 2 repealed by Laws of 1835, ch. 211.]

Money
counts.

§ 3. The plaintiff in any such action, may declare on the money counts alone; and every such bill or note may be given in evidence, under the money counts in all cases, where a copy of the bill or note shall have been served with the declaration; of which service the entry in substance of a true copy of the said bill or note in the circuit roll, with a suggestion of the service thereof upon all the defendants served with process or declaration, shall be prima facie evidence.

As amended by Laws of 1837, ch. 93.

7 N. Y., 285; 20 W., 674; 23 W., 38; 1 S. S. C., 66.

Judgment.

§ 4. In any such action, judgment may be rendered for the plaintiff against some one or more of the defendants; and also in favor of some one or more of the defendants against the plaintiff, according as the rights and liabilities of the respective parties shall appear, either upon confession, default by pleading or on trial: and where judgment shall be rendered in favor of any defendant, he shall recover costs against the plaintiff, in the same manner as though judgment had been rendered for all of the defendants.

23 B., 442; 1 H., 371, 502; 19 W., 643.

Demands
may be set
off.

§ 5. In any such action, any person or persons sued, shall be entitled to set off his or their demands against the plaintiff, in the same manner as though such defendant or defendants had been sued in the form heretofore used.

Verdict in
case of set
off.

§ 6. If, upon the trial of any such action, the whole amount of the demands set off by any or all of the defendants, and allowed by the jury or referees, shall be equal to, or shall exceed the amount of the plaintiff's demand as proved on the trial, the jury or referees shall find a verdict or make a report in favor of the defendants generally: but if the jury or referees shall allow any demand as a set off, and shall still find or report a balance in favor of the plaintiff, they shall state in their verdict, or certify in their report, the amount which they allow to each defendant as a set off against the plaintiff's demand.

Rights and
responsibilities.

§ 7. The rights and responsibilities of the several parties to any such bill or note, as between each other, shall remain the same as though this act had not been passed; saving only the rights of the plaintiff, so far as they may have been determined by the judgment.

23 B., 442.

Witnesses.

§ 8. In every suit brought pursuant to the provisions of this act, any one or more of the defendants shall be entitled to the testimony of any co-defendant as a witness, in all those cases where the defendant or defendants calling the witness

would have been entitled to his testimony, had the suit been brought in the form heretofore used, and in no other case.

5 B., 684.

§ 9. Nothing in this act shall be construed to prevent the holder of any bill or note from bringing separate actions against the parties to any such bill or note, in the manner now authorized by law.

23 B., 442.

§ 10. In all actions on promissory notes or bills of exchange where the plaintiff shall file a copy of such promissory note or bill of exchange, with the declaration, the damages may be assessed as though the said note or bill of exchange had been set out specially in said declaration.

CHAP. 141.

AN ACT in relation to bills of exchange and promissory notes.

PASSED April 23, 1835.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. In all cases where a notice of non-acceptance of a bill of exchange, or non-payment of a bill of exchange, promissory note, or other negotiable instrument may be given by sending the same by mail, it shall be sufficient if such notice be directed to the city or town where the person sought to be charged by such notice resided at the time of drawing, making or endorsing such bill of exchange, promissory note or other negotiable instrument, unless such person at the time of affixing his signature to such bill, note or other negotiable instrument, shall in addition thereto specify thereon the post office to which he may require the notice to be addressed.

§ 2. Nothing in this act shall apply to bills of exchange, promissory notes, or other negotiable instruments made or drawn before this act takes effect.

3 N. Y., 444; 25 B., 140; 7 H., 444; 24 W., 234; 23 W., 620; 21 W., 12; 19 W., 384.

CHAP. 211.

AN ACT to amend "An act regulating suits on bills of exchange and promissory notes," passed April 25, 1832.

PASSED May 2, 1835.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. The second section of the act hereby amended is repealed, and the following substituted in lieu thereof, viz.: Abatement may be pleaded.

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In any such action any joint drawer, maker, endorser or acceptor may plead in abatement the non-joinder of any other joint drawer, maker, endorser or acceptor, in the same manner as though this act had not been passed. And no judgment shall be rendered or record made up against any several drawer, maker, endorser or acceptor not served with process or with the declaration, when the suit shall be commenced by the service of a declaration. But judgment may be obtained against joint contractors, some of whom only have been served with process or with copy of the declaration, when the suit is commenced by declaration, and such judgment shall have the same effect against the joint contractors as if this act had not been passed.

Judgment,
how to be
entered.

§ 2. It shall not be necessary for the plaintiff to include in the same record a judgment against all the parties to said bill or note, but judgment may be entered against any of the parties to said bill or note, whenever the plaintiff would be entitled to the same if the suit had been commenced against such parties only; and if the trial or hearing of such cause be put off by any of the parties to the said bill or note; or if a default shall have been obtained against part of the defendants, the plaintiff may proceed to the trial or hearing against the other parties, in the same manner as if the suit had been commenced against the other parties only, and the action shall thereby be severed, and the proceedings and judgments authorized by this section shall be subject to the provisions of the act hereby amended, and also to the provisions of the fifteenth section of title first of chapter tenth of the third part of the Revised Statutes.

23 W., 38; 19 W., 126, 643.

Testimony
of co-defen-
dant.

§ 3. In every suit brought pursuant to the provisions of the act hereby amended, the plaintiff shall be entitled to the testimony of any defendant as a witness in all those cases where the plaintiff calling the witness would have been entitled to his testimony against the other parties to the bill or note, had the suit been brought in the form heretofore used, and in no other case.

Judgment
for defen-
dant.

§ 4. One of the defendants in any suit brought in pursuance of the act hereby amended, may move for judgment as in case of non-suit, although the other defendants shall not unite in the motion; but one of several joint makers, drawers, endorsers or acceptors shall not make such motion, unless the other joint contractors with him shall unite in the motion.

CHAP. 282.

AN ACT to amend the act passed April 25, 1832, entitled
 “An act regulating suits on bills of exchange and promissory notes.

PASSED May 26, 1841.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. It shall be lawful for any party to any promissory note or bill of exchange, who shall be sued jointly with any other party to said bill or note, to apply to the supreme court for order or relief which such party applying would be entitled to, if such party had been separately sued in such action, and said court are authorized in their discretion to grant to such party applying the like order or relief that by the rules and practice of the court would be granted to such party if separately sued.

Parties
sued jointly
may apply
to supreme
court for
relief.

CHAP. 24.

AN ACT in relation to suits on bills of exchange and promissory notes.

PASSED March 15, 1845.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. Whenever a suit shall be brought upon a bill of exchange or promissory note, according to the provisions of the act entitled “An act regulating suits on bills of exchange and promissory notes,” passed April 25th, 1832, and an act to amend the third section of that act, passed March 21st, 1837, and on all other actions upon bills of exchange and promissory notes, an entry in substance of a true copy of the said bill or note in the copy of the pleadings furnished to the court upon trial, with a suggestion of the service of such copy upon all the defendants served with the process or declaration, shall be prima facie evidence of such service.

Copy of bill
or note to
be entered
on plead-
ings.

CHAP. 261.

AN ACT to designate the holidays to be observed in the acceptance and payment of bills of exchange and promissory notes.

PASSED April 4, 1849.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Holidays.

§ 1. The following days, viz.: the first day of January, commonly called New Year's day, the fourth day of July, the twenty-fifth day of December, commonly called Christmas day, and any day appointed or recommended by the governor of this state, or the President of the United States, as a day of fast or thanksgiving, shall for all purposes whatsoever as regards the presenting for payment or acceptance, and of the protesting and giving notice of the dishonor of bills of exchange, bank checks and promissory notes, made after the passage of this act, be treated and considered as is the first day of the week, commonly called Sunday.

CHAP. 416.

AN ACT in relation to commercial paper.

PASSED April 14, 1857.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Sight drafts

§ 1. All bills of exchange or drafts, drawn payable at sight, at any place within this state, shall be deemed due and payable on presentation, without any days of grace being allowed thereon.

Checks,
bills of ex-
change, &c.

§ 2. All checks, bills of exchange or drafts, appearing on their face to have been drawn upon any bank or upon any banking association or individual banker, carrying on banking business under the act to authorize the business of banking, which are on their face payable on any specified day or in any number of days after the date or sight thereof, shall be deemed due and payable on the day mentioned for the payment of the same, without any days of grace being allowed, and it shall not be necessary to protest the same for non-acceptance.

Manner of
protesting.

§ 3. Whenever the residence or place of business of the endorser of a promissory note, or of the drawer or endorser of a check, draft or bill of exchange, shall be in the city or town, or whenever the city or town indicated under the endorsement or signature of such endorser or drawer, as his or her place of residence, or whenever in the absence of such

indication, the city or town where such endorser or drawer, from the best information obtained by diligent inquiry, is reputed to reside or have a place of business, shall be the same city or town where such promissory note, check, draft or bill of exchange is payable or legally presented for payment, or acceptance, all notices of non-payment and of non-acceptance of such promissory note, check, draft or bill of exchange may be served by depositing them, with the postage thereon prepaid, in the post-office of the city or town where such promissory note, check, draft, or bill of exchange was payable or legally presented for payment or acceptance, directed to the endorser or drawer, at such city or town.

§ 4. This act shall take effect on the first day of July next, but shall not apply to any bills of exchange, checks, drafts or promissory notes bearing date prior to that time. Restriction.

CHAP. 430.

AN ACT to prevent usury.

PASSED May 15, 1837.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. The fifth section of title three of chapter four, part two of the Revised Statutes, is hereby amended so as to read as follows: Amendment to Revised Statutes.

§ 5. All bonds, bills, notes, assurances, conveyances, all other contracts or securities whatsoever, (except bottomry and respondentia bonds and contracts,) and all deposits of goods or other things whatsoever, whereupon or whereby there shall be reserved or taken, or secured or agreed to be reserved or taken, any greater sum, or greater value, for the loan or forbearance of any money, goods or other things in action, than is above prescribed, shall be void; but this act shall not affect such paper as has been made and transferred previous to the time it shall take effect.

7 N. Y., 344; 6 N. Y., 380; 32 B., 559; 26 B., 687; 2 B. Ch., 77; 10
 Pai., 76, 580; 9 Pai., 197, 226; 1 S. Ch., 187; 3 Ed., 442; 6 H., 512;
 1 S. S. C., 296.

§ 2. Whenever in an action at law the defendant shall plead or give notice of the defence of usury, and shall verify the truth of his plea or notice by affidavit, he may, for the purpose of proving the usury, call and examine the plaintiff as a witness, in the same manner as other witnesses may be called and examined. Plaintiff may be examined.

2 D., 159; 6 H., 223; 5 H., 523, 548, 608; 4 H., 35, 567; 3 H., 564; 7
 Pai., 598.

§ 3. Every person offending against the provisions of the said title, or of this act, may be compelled to answer on oath Offenders may be compelled to answer.

PART II.

any bill that shall be exhibited against him, in the court of chancery, for relief, or discovery, or both.

1 E. D. S., 7.

Offer to pay
principal or
interest.

§ 4. Whenever any borrower of money, goods, or things in action, shall file a bill in chancery for relief or discovery, or both, against any violation of the provisions of the said title or of this act, it shall not be necessary for him to pay or offer to pay any interest or principal on the sum or thing loaned; nor shall any court of chancery require or compel the payment or deposit of the principal sum or interest, or any portion thereof, as a condition of granting relief or compelling or discovering to the borrower in any case, usurious loans forbidden by said title or by this act.

14 N. Y., 131; 3 N. Y., 499; 1 N. Y., 278; 30 B., 627; 14 B., 144; 1 B. 278; 3 Pai., 528; 7 H., 391.

Power of
court of
chancery.

§ 5. Whenever it shall satisfactorily appear by the admissions of the defendant, or by proof, that any bond, bill, note, assurance, pledge, conveyance, contract, security, or any evidence of debt, has been taken or received in violation of the provisions of said title or of this act, the court of chancery shall declare the same to be void, and enjoin any prosecution thereon, and order the same to be surrendered and cancelled.

3 N. Y., 499.

Punish-
ment.

§ 6. Any person who shall directly or indirectly receive any greater interest, discount or consideration than is prescribed in the said title, and in violation of the provisions of said title or of this act, shall be deemed guilty of a misdemeanor, and on conviction thereof, the person so offending shall be punished by fine not exceeding one thousand dollars, or imprisonment not exceeding six months, or both.

10 Pai., 583; 3 D., 593.

Courts to
charge
grand
juries.

§ 7. It shall be the duty of all courts of justice to charge the grand jury especially to inquire into any violations of the provisions of the said title or of this act.

Punish-
ment for
false swear-
ing.

§ 8. Every plaintiff examined as a witness pursuant to the provisions of this act, or any defendant under the provisions of this act, who shall swear falsely, shall upon conviction thereof suffer the pains and penalties of wilful and corrupt perjury; but the testimony given by any plaintiff, or the answer of any defendant, made pursuant to the said title or of this act, shall not be used against such person before any grand jury, or on the trial of any indictment against such person.

7 Pai., 598; 2 D., 159.

Repeal.

§ 9. So much of title third, chapter fourth and part second of the Revised Statutes, as is inconsistent with the provisions of this act, is hereby repealed.

CHAP. 172.

AN ACT to prohibit corporations from interposing the defence of usury in any action.

PASSED April 6, 1850.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. No corporations shall hereafter interpose the defence of usury in any action. Defence
forbidden.

§ 2. The term corporation as used in this act shall be construed to include all associations and joint stock companies having any of the powers and privileges of corporations not possessed by individuals or partnerships. Meaning of
the terms
used.

[This act is already inserted under the title Corporation, but being brief is repeated here for greater convenience.]

CHAP. 179.

AN ACT for the Amendment of the Law relative to Principals and Factors or Agents.

PASSED April 16, 1830.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. After this act shall take effect, every person in whose name any merchandize shall be shipped, shall be deemed the true owner thereof, so far as to entitle the consignee of such merchandize to a lien thereon, Lien on
merchan-
dize.

1. For any money advanced, or negotiable security given, by such consignee, to or for the use of the person in whose name such shipment shall have been made; and,

2. For any money or negotiable security received by the person in whose name such shipment shall have been made, to or for the use of such consignee.

24 N. Y., 521, 638; 6 N. Y., 380; 28 B., 178; 20 W., 9; 10 W., 493.

§ 2. The lien provided for in the preceding section, shall not exist where such consignee shall have notice, by the bill of lading or otherwise, at or before the advancing of any money or security by him, or at or before the receiving of such money or security by the person in whose name the shipment shall have been made, that such person is not the actual and bona fide owner thereof. When to
exist.

28 B., 178.

§ 3. Every factor or other agent, entrusted with the possession of any bill of lading, custom-house permit, or warehouse-keeper's receipt for the delivery of any such merchandize, and In what
case the
factor or
agent is
deemed the
true owner.

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every such factor or agent not having the documentary evidence of title, who shall be entrusted with the possession of any merchandize for the purpose of sale, or as a security for any advances to be made or obtained thereon, shall be deemed to be the true owner thereof, so far as to give validity to any contract made by such agent with any other person, for the sale or disposition of the whole or any part of such merchandize, for any money advanced, or negotiable instrument or other obligation in writing given by such other person upon the faith thereof.

3 D., 472; 1 E. D. S., 7.

Right in
case of de-
posit.

§ 4. Every person who shall hereafter accept or take any such merchandize in deposit from any such agent, as a security for any antecedent debt or demand, shall not acquire thereby, or enforce any right or interest in or to such merchandize or document, other than was possessed or might have been enforced by such agent at the time of such deposit.

3 D., 472.

Rights of
the true
owner of
merchan-
dize.

§ 5. Nothing contained in the two last preceding sections of this act, shall be construed to prevent the true owner of any merchandize so deposited, from demanding or receiving the same, upon repayment of the money advanced, or on restoration of the security given, on the deposit of such merchandize, and upon satisfying such lien as may exist thereon in favor of the agent who may have deposited the same; nor from recovering any balance which may remain in the hands of the person with whom such merchandize shall have been deposited, as the produce of the sale thereof, after satisfying the amount justly due to such person by reason of such deposit.

Common
carrier.

§ 6. Nothing contained in this act shall authorize a common carrier, warehouse-keeper, or other person to whom merchandize or other property may be committed for transportation or storage only, to sell or hypothecate the same.

Penalty.

§ 7. Every factor or agent who shall deposit any merchandize entrusted or consigned to him, or any document so possessed or entrusted as aforesaid, as a security for any money borrowed or negotiable instruments received by such factor or agent, and shall apply or dispose of the same to his own use, contrary to good faith, and with intent to defraud the true owner; and every factor or agent who shall sell any merchandize entrusted or consigned to him, in the like manner and with the like fraudulent intent; and every other person who shall knowingly connive with, or aid or assist, any such factor or agent in any such fraudulent deposit or sale, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by fine and imprisonment, at the discretion of the court in which such conviction shall take place.

Powers of
the court of
chancery.

§ 8. Nothing contained in the last preceding section, shall be construed to prevent the court of chancery from compel-

ling discovery, or granting relief upon any bill to be filed in that court by the owner of any merchandize so entrusted or consigned, against the factor or agent by whom such merchandize shall have been applied or sold contrary to the provisions of the said section, or against any person who shall have been knowingly a party to such fraudulent application or sale thereof; but no answer to any such bill shall be read in evidence against the defendant making the same, on the trial of any indictment for the fraud charged in the bill.

CHAPTER V.

Debtor and Creditor.

CHAP. 238.

AN ACT to exempt certain officers and soldiers of the revolutionary army from imprisonment for debt.

PASSED April 17, 1830.

The People of the State of New York, represented in Senate and Assembly do enact as follows:

§ 1. After the passing of this act, no person who shall have served in the regular army, or in the militia of either of the states, for any period during the war of the revolution, shall be imprisoned for debt, or on any process in any action for the recovery of money due upon any contract express or implied.

Persons exempted.

§ 2. Whenever any person coming within the provisions of the first section of this act shall be arrested upon a writ of capias ad respondendum, or other mesne process, in any such action as aforesaid, it shall be the duty of the sheriff or other officer by whom such arrest shall have been made, to accompany such person, if requested so to do, before some judge of the supreme court, or court of common pleas, or supreme court commissioner, or mayor or recorder of a city, whose duty it shall be upon the production by the person arrested, of a certificate entitling him to a pension from the United States, as a revolutionary officer or soldier, or upon other satisfactory proof of his having performed such service as is mentioned in the first section of this act, to make an order under his hand, that the person so arrested be discharged without bail, upon his endorsing his appearance upon the process under which he shall have been arrested; which order shall be delivered to, and shall be binding upon the sheriff or other officer by whom the arrest shall have been made, and shall be a sufficient justification of such discharge by the said sheriff or other officer, in any suit or proceedings

Proceedings in case of arrest.

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Order to
discharge.

which may be instituted against him, for or on account thereof; but nothing in this act shall prevent the imprisonment or holding to bail of any person, until such order for discharge shall have been obtained.

§ 3. Whenever the body of any person coming within the description contained in the first section of this act, shall be taken in execution, upon his making application and presenting such proof to a judge, commissioner, mayor or recorder, as is mentioned in the foregoing section, the said judge, commissioner, mayor or recorder, shall make an order in writing for his discharge; which order shall be delivered to, and shall be binding upon the sheriff or other officer in whose custody such person may be, and shall be a sufficient justification of such discharge by such sheriff or other officer; but after such discharge, an execution may issue against the goods and chattels, lands and tenements of such person so discharged, as if no execution against the body had ever issued.

CHAP. 258.

AN ACT relative to the estates of insolvent debtors and jurors in certain cases.

PASSED April 19, 1830.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Relief in
case of the
death of
assignees.

§ 1. Whenever, by reason of the death of all the assignees of an insolvent debtor, appointed under any of the insolvent laws of this state, which were in force previous to the first day of January, one thousand eight hundred and thirty, there shall be no person to represent such insolvent estate, the officer who originally appointed the assignee or assignees, or in case of his absence, death or removal, any other officer residing in the county in which the original appointment was made, who by law would have been empowered to make the same, shall, upon the written application of a majority of the petitioning creditors or their representatives, appoint such person as they shall recommend in the place of such deceased assignee or assignees, who shall in all respects have the like powers and authority, and be subject to the same control, obligations and responsibilities.

Prior to
this act.

§ 2. This act shall be deemed to apply to cases in which the assignee or assignees have died previous to its passage.

CHAP. 300.

AN ACT to abolish imprisonment for debt, and to punish fraudulent debtors

PASSED April 26, 1831.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. No person shall be arrested or imprisoned on any civil process issuing out of any court of law, or on any execution issuing out of any court of equity, in any suit or proceeding instituted for the recovery of any money due upon any judgment or decree, founded upon contract, or due upon any contract, express or implied, or for the recovery of any damages for the non-performance of any contract.

Imprisonment for debt abolished.

1 N. Y., 147; 28 B., 49; 10 B., 533; 3 B., 29; 1 D., 175; 7 H., 578; 11 Pai., 605; 5 Pai., 80; 4 Pai., 397; 1 S. S. C., 281; 19 W., 11; 18 W., 644; 17 W., 32; 13 W., 68; 12 W., 231; 10 W., 602; 9 W., 430. See Laws of 1840, ch. 165; 1846, ch. 209.

§ 2. The preceding section shall not extend to any person who shall not have been a resident of this state, for at least one month previous to the commencement of a suit against him; nor to proceedings as for contempts to enforce civil remedies; nor to actions for fines or penalties, or on promises to marry, or for moneys collected by any public officer, or for any misconduct or neglect in office, or in any professional employment.

Exceptions.

1 D., 175; 19 W., 11; 18 W., 512; 10 W., 602; 9 W., 503.

§ 3. In all cases where, by the preceding provisions of this act, a defendant cannot be arrested and imprisoned, it shall be lawful for the plaintiff who shall have commenced a suit against such defendant, or shall have obtained a judgment or decree against him, in any court of record, to apply to any judge of the court in which such suit is brought, or to any officer authorized to perform the duties of such judge, for a warrant to arrest the defendant in such suit.

Warrant to arrest may be applied for.

1 N. Y., 337; 26 B., 257; 4 H., 577; 16 W., 546; 10 W., 607. See Laws of 1848, ch. 48.

§ 4. No such warrant shall issue, unless satisfactory evidence be adduced to such officer, by the affidavit of the plaintiff, or of some other person or persons, that there is a debt or demand due to the plaintiff, from the defendant, amounting to more than fifty dollars, and specifying the nature and amount thereof, as near as may be, for which the defendant, according to the provisions of this act, cannot be arrested or imprisoned; and establishing one or more of the following particulars:

Evidence to support application.

1. That the defendant is about to remove any of his property out of the jurisdiction of the court in which such suit is brought, with intent to defraud his creditors: or,

PART II.

2. That the defendant has property or rights in action, which he fraudulently conceals, or that he has rights in action, or some interest in any public or corporate stock, money or evidences of debt, which he unjustly refuses to apply to the payment of any judgment or decree which shall have been rendered against him belonging to the complainant: or,

3. That he has assigned, removed or disposed of, or is about to dispose of, any of his property, with the intent to defraud his creditors: or,

4. That the defendant fraudulently contracted the debt or incurred the obligation, respecting which such suit is brought.

12 N. Y., 326; 1 N. Y., 337; 6 H., 429; 16 W., 546; 15 W., 462; 10 W., 607. See Laws of 1840, ch. 377.

Warrant
may be is-
sued.

§ 5. Upon such proof being made to the satisfaction of the officer to whom the application shall be addressed, he shall issue a warrant, in behalf of the people of this state, either with or without seal, directed to any sheriff, constable or marshal, within the county where such officer shall reside, therein briefly setting forth the complaint, and commanding the officer to whom the same shall be directed, to arrest the person named in such warrant, and bring him before such officer without delay; which warrant shall be accompanied by a copy of all affidavits presented to such officer, upon which the warrant issued; which shall be certified by such officer, and shall be delivered to the defendant, at the time of serving the warrant, by the officer serving the same.

16 B., 426; 5 H., 605; 10 W., 578, 607.

How to be
executed.

§ 6. The officer to whom such warrant shall be delivered, shall execute the same, by arresting the person named therein, and bringing him before the officer issuing such warrant; and shall keep him in custody until he shall be duly discharged, or committed as hereinafter provided.

Charge may
be contro-
verted.

§ 7. On the appearance of the person so arrested, before the officer issuing such warrant, he may controvert any of the facts and circumstances on which such warrant issued, and may, at his option, verify his allegations by his own affidavit; and in case of his so verifying the same, the complainant may examine such defendant on oath, touching any fact or circumstance material to the inquiry, and the answers of the defendant on such examination, shall be reduced to writing and subscribed by him; and the officer conducting such inquiry, shall also receive such other proof as the parties may offer, either at the time of such first appearance, or at such other time as such hearing shall be adjourned to; and in case of an adjournment, such officer may take a recognizance, with or without surety, at his discretion, from the defendant, for his appearance at the adjourned hearing.

6 H., 429; 16 W., 546; 10 W., 609. See Laws of 1840, ch. 377.

Power of
officer iss-
ing warrant

§ 8. The officer conducting such inquiry, shall have the same authority to issue subpoenas for witnesses, which is now

conferred by law on any officer empowered to hear applications of insolvents, for the purpose of exonerating their persons from imprisonment, and shall have the same power to enforce obedience to such subpoenas, and to punish witnesses refusing to testify; and witnesses wilfully disobeying any such subpoenas, shall be liable to the penalties prescribed in the seventh article of title first and chapter fifth of the second part of the Revised Statutes.

§ 9. If such officer is satisfied that the allegations of the complainant are substantiated, and that the defendant has done, or is about to do, any one of the acts specified in the fourth section of this act, he shall by a commitment under his hand, direct that such defendant be committed to the jail of the county in which such hearing shall be had, to be there detained until he shall be discharged according to law; and such defendant shall be committed and detained accordingly

In what cases defendant may be committed to jail

6 H., 429; 4 H., 606; 10 W., 584, 609.

§ 10. Such commitment shall not be granted, if the defendant shall either,

When commitment may be avoided.

1. Pay the debt or demand claimed, with the costs of the suit and of the proceedings against him: or,

2. Give security to the satisfaction of the officer before whom the hearing shall be had, that the debt or demand of the plaintiff, with the costs of the suit and proceedings aforesaid, shall be paid within sixty days, with interest: or,

3. Make and deliver to such officer an inventory of his estate and an account of his creditors, and execute an assignment of his property as hereinafter provided, on which the same proceedings shall be had as upon a petition of such defendant in the manner herein after directed, except that no notice to the plaintiff shall be requisite; and no adjournment shall be granted for more than three days, except at the instance of the defendant; and a discharge shall be granted in the like case, and with the same effect: or,

4. Enter into a bond to the complainant, in a penalty not less than twice the amount of the debt or demand claimed, with such sureties as shall be approved by such officer, conditioned that such defendant, will, within thirty days, apply for an assignment of all his property, and for a discharge, as provided in the subsequent sections of this act, and diligently prosecute the same until he obtains such discharge: or,

5. If such defendant shall give a bond to such plaintiff, in the penalty and with the sureties above prescribed, conditioned that he will not remove any property which he then has, out of the jurisdiction of the court in which such suit is brought, with the intent to defraud any of his creditors; and that he will not assign or dispose of any such property, with such intent, or with a view to give a preference to any creditor for any debt, antecedent to such assignment or disposition, until the demand of the plaintiff, with the costs, shall be satisfied, or until the expiration of three months after a final

PART II.

judgment shall be rendered in the suit brought for the recovery of such demand.

17 B., 538; H. & D., 81; 5 D., 554; 3 D., 607; 4 H., 577, 606; 15 W., 462; 10 W., 578. See Laws of 1837, ch. 418.

Custody as
on criminal
process.

§ 11. Any defendant committed as above provided, shall remain in custody in the same manner as other prisoners on criminal process, until a final judgment shall have been rendered in his favor, in the suit prosecuted by the creditor, at whose instance such defendant shall have been committed, or until he shall have assigned his property and obtained his discharge, as provided in the subsequent sections of this act: but such defendant may be discharged by the officer committing him; or any other person authorized to discharge the duties of such officer, on such defendant paying the debt or demand claimed, or giving security for the payment thereof, as provided in the tenth section of this act, or on his executing either of the bonds mentioned in the said section.

15 W., 462.

Petition for
a discharge.

§ 12. Any person committed as above provided, or who shall have given the bond specified in the fourth subdivision of the tenth section of this act, or against whom any suit shall have been commenced in a court of record, in which such person by the provisions of this act, cannot be arrested or imprisoned, may present a petition to a justice of the supreme court, a circuit judge, any judge of a county court, or any supreme court commissioner in the county in which such defendant resides or is imprisoned, praying that his property may be assigned, and that he may have the benefit of the provisions of this act.

29 B., 472; H. and D., 81; 5 D., 554; 4 H., 606; 3 H., 110.

With an
account and
inventory.

§ 13. On presenting such petition, such defendant shall deliver an account of his creditors, and an inventory of his estate, similar in all respects to the account and inventory required of a debtor, by the sixth article of title first and chapter five of the second part of the Revised Statutes; and shall annex to the said petition, account and inventory, an affidavit, which shall be taken and subscribed by him, before the officer to whom such petition is presented, similar in all respects to the oath required by the fifth section of the sixth article of the aforesaid title and chapter.

H. and D., 81.

Notice of
same.

§ 14. Fourteen days' previous notice of the time and place at which, and of the officer to whom such petition will be presented, together with a copy of such petition, and the account and inventory thereto annexed, shall be served personally on the plaintiffs by whom such defendant shall be prosecuted, their personal representatives or their attorney; and proof of such service shall be made at the time of presenting such petition.

§ 15. Any creditor of such petitioner may oppose such application, and may examine the petitioner, his wife or any other witness, in the manner prescribed in the third article of the aforesaid first title and fifth chapter, and shall be entitled to the like process to compel their attendance and testimony; and such witnesses shall, in all respects, be subject to the provisions of the seventh article of the said title, for their neglect to obey subpoenas, or to testify.

13 B., 617.

§ 16. Upon sufficient cause shown by the petitioner, or by any creditor, the officer to whom such petition is addressed, may adjourn the hearing thereof, not exceeding thirty days; and if, at any hearing of such petition, the opposing creditor shall fail to satisfy such officer that the proceedings on the part of the petitioner are not just and fair, or that he has concealed, removed or disposed of, any of his property, with intent to defraud his creditors; such officer shall order an assignment of all the property of such petitioner, in the same manner as provided in the fifth article of the first title of the fifth chapter of the second part of the Revised Statutes, except such as is therein exempt; which assignment shall be executed with the like effect as declared in the said article, and shall be recorded in the same manner.

2 B. Ch., 291; 10 W., 585.

§ 17. Such officer shall appoint one or more assignees, to whom such petitioner shall assign all his estate; and upon producing to such officer, evidence that such assignment has been recorded, and a certificate of the assignees, that all the property of such petitioner, specified in his inventory, has been delivered to them, or that he has given satisfactory security for the future delivery of the same, such officer shall grant to the petitioner a discharge, which shall exonerate him from being proceeded against by any creditor entitled to a dividend of the estate of such petitioner, as hereinafter provided, under the third, fourth, fifth, sixth, seventh, eighth and ninth sections of this act, for any fraud committed or intended before such discharge.

2 B. Ch., 291; see Laws of 1845, ch. 214.

§ 18. The assignees to whom such assignment shall be made, shall be vested with all the rights and powers over the property so assigned, which are specified in the eighth article of the first title of chapter five of the second part of Revised Statutes, and shall be subject to the same duties, obligations and control, in all respects, and shall make dividends; and vacancies in their number, shall be supplied as therein directed.

2 B. Ch., 291.

§ 19. The general provisions applicable to proceedings under the several articles of the said first title, and which are con-

CHAP. V.
Who may
oppose
petition.

Adjourn-
ments.

Assignee to
be appoint-
ed.

Rights and
powers of
assignee.

General
provisions.

PART II.

Fees.

tained in the seventh article of the said title, shall be deemed to apply to the proceedings herein directed, so far as the same are not inconsistent with the provisions of this act; and the officers and assignees performing any duties under this act, shall be entitled for their services, to the same fees and compensation as are provided by law, for similar services under the fifth article of the aforesaid title of chapter five, and as are provided by law for services in criminal cases.

23 N. Y., 150.

Relief to
those then
imprisoned

§ 20. Every person imprisoned on civil process, at the time of this act taking effect as a law, in any case where, by the preceding provisions of this act, such person could not be arrested or imprisoned, shall be entitled to be discharged at the expiration of three months after this act shall take effect as a law, unless the creditor at whose suit such person shall be imprisoned, shall, within the time aforesaid, make application and complaint to some judge of the court in which such suit was brought, or to some officer authorized to perform the duties of such judge, as specified in the third and fourth sections of this act; and upon such application being made, if a warrant is not issued as herein provided, such imprisoned person shall be entitled to be discharged from imprisonment; and if such warrant be granted, the same proceeding shall be had thereon, as herein before provided; and the removal of the defendant from any jail in which he may be imprisoned by any warrant in such proceedings, shall not be deemed an escape.

1b.

§ 21. Every person imprisoned, as in the last preceding section specified, may give a notice to the creditors at whose suit he is imprisoned, and present a petition and inventory, as specified in the twelfth and thirteenth sections of this act; and the same proceedings shall be had thereon as herein before provided, and a discharge granted on such petition as therein directed, shall entitle such petitioner to be discharged from his imprisonment.

Liability
for costs.

§ 22. Whenever any complaint shall be made under the third, fourth and fifth sections of this act, and the same shall be dismissed, the party making the same shall be liable for all fees to officers, and for all costs and expenses which the defendant shall have incurred.

4 H., 540; 10 W., 607. See Laws of 1838, ch. 138.

To which
property
bond is to
apply.

§ 23. Whenever in this act, the removal, concealment or disposal of any property is declared to be the ground of any complaint or proceeding, and where any bond is required in reference to such concealment, removal or disposal, the same shall not be deemed to apply to any property which shall be expressly exempted by statute from levy and sale under execution.

Recovery
on bond.

§ 24. Whenever a bond, given under the tenth section of this act, shall become forfeited by the non-performance of the

condition thereof, the plaintiff shall be entitled to recover thereon the amount due to him, on the judgment obtained in the original suit instituted against the defendant giving such bond.

§ 25. The foregoing provisions of this act shall not extend to suits or proceedings before justices' or other courts for the recovery of any debt or demand of fifty dollars or less.

Not to
apply to
debts under
\$50.

See Laws of 1838, ch. 38.

§ 26. Any person who shall remove any of his property out of any county, with intent to prevent the same from being levied upon by any execution, or who shall secrete, assign, convey, or otherwise dispose of any of his property, with intent to defraud any creditor, or to prevent such property being made liable for the payment of his debts, and any person who shall receive such property with such intent, shall, on conviction, be deemed guilty of a misdemeanor; and where the property so removed, secreted, concealed, assigned, conveyed, received or otherwise disposed of, shall be worth fifty dollars or less, such offence may be tried by a court of special sessions of the peace in the manner directed in the third title of chapter second of the fourth part of the Revised Statutes, and in such case, the punishment for such offence shall be limited as prescribed in the said title.

Punish-
ment for
removing
or secret-
ing prop-
erty.

19 W., 480; 16 W., 546; 15 W., 462; 13 W., 399.

§ 27. Whenever any person shall have been convicted of a misdemeanor under the last preceding section of this act, the same proceedings may be had for the appointment of trustees to take charge of the estate of such person as are authorized by the second article of the first title of chapter five of the second part of the Revised Statutes; and the trustees so appointed shall possess all the powers, rights, and authority, be entitled to the same compensation and be subject to the same duties, obligations and control, in all respects, as trustees appointed under the said second article; and in addition thereto, if such trustees suspect that the person so convicted has concealed about his person or otherwise, money or evidences of debt, upon making oath of the same before any judge of a county court, and on such judge being satisfied that such suspicions are well founded, he may issue a warrant authorizing and commanding any sheriff or constable to search the person of such defendant, and any place occupied by him, or any trunk or other article owned or possessed by him, for such money or evidences, and to deliver what shall be so discovered to such trustees.

Conviction
for a mis-
demeanor.

§ 28. When it shall appear to any officer authorized to entertain any proceedings under this act, that any misdemeanor or perjury has been committed by any party or witness, it shall be his duty to take the measures prescribed by law to cause the offender to appear at the proper court having jurisdiction of the offence, to answer for the same.

Perjury.

16 W., 546.

PART II.
Answering
in equity.

§ 29. No person shall be excused from answering any bill in equity, seeking a discovery in relation to any fraud prohibited by this act, or from answering as a witness in relation to any such fraud; but no such answer shall be used in evidence in any other suit or prosecution.

16 W., 546.

Executions
not to
direct
arrest.

§ 30. No execution issued on any judgment rendered by any justice of the peace upon any demand arising upon contract express or implied, or upon any other judgment founded upon contract, whether issued by such justice or by the clerk of the county, shall contain a clause authorizing an arrest or imprisonment of the person against whom the same shall issue, unless it shall be proved, by the affidavit of the person in whose favor such execution shall issue, or that of some other person, to the satisfaction of such clerk or justice, either,

2. That such judgment was for the recovery of money collected by any public officer: or,

3. For official misconduct or neglect of duty; or,

4. For damages for misconduct or neglect in any professional employment.

As amended by Laws of 1840, ch. 377
22 B., 593; 15 B., 652; 15 W., 479.

Warrant
when to
issue.

§ 31. No warrant shall issue against a defendant in any case in which, by the provisions of the last preceding section, an execution on the judgment recovered, could not be issued against his body, and whenever a warrant in such case shall issue, the like affidavit shall be required as for issuing of an execution by the provisions of said section.

15 W., 479.

In cases of
non-resi-
dent plain-
tiffs.

§ 32. Whenever by the provisions of the last preceding section no warrant can issue, and the plaintiff shall be a non-resident of the county, and shall give the like proof of the fact, and tender to the justice the security now required by law to entitle him to a warrant, the justice shall issue a summons, which may be made returnable not less than two nor more than four days from the date thereof, and shall be served at least two days before the time of appearance mentioned therein; and if the same shall be returned personally served, the same proceedings shall be had, and no longer adjournment granted, than in case of a warrant at the instance of a non-resident plaintiff.

15 W., 479, 652.

In case of
non-resi-
dent de-
fendant.

§ 33. Whenever, by the provisions of the thirtieth section of this act, no warrant can issue, and the defendant shall reside out of the county, he shall be proceeded against by summons or attachment, returnable not less than two, nor more than four days from the date thereof, which shall be served at least two days before the time of appearance mentioned therein; and if such defendant be proceeded

against otherwise, the justice shall have no jurisdiction of the cause.

25 B., 429; 22 B., 593; 15 B., 652; 14 B., 96; 11 B., 524; 4 D., 592; 6 H., 313; 24 W., 485; 23 W., 336; 15 W., 479, 652; 1 E. D. S., 615.

§ 34. In addition to the cases in which suits may now be commenced before justices of the peace by attachment, any suit for the recovery of any debt or damage arising upon any contract express or implied, or upon any judgment for one hundred dollars or less, may be so commenced, whenever it shall satisfactorily appear to said justice that the defendant is about to remove from the county, any of his property, with intent to defraud his creditor, or has assigned, disposed of, secreted, or is about to assign, dispose of, or secrete any of his property, with the like intent, whether such defendant be a resident of this state or not.

Attach-
ments may
issue.

So amended by Laws of 1842, ch. 107.

16 B., 368; 15 B., 546; 4 D., 118, 592; 24 W., 485; 23 W., 356; 20 W., 77; 15 W., 479; 14 W., 237; 13 W., 404; 12 W., 360.

§ 35. Before any attachment shall issue in such case, or in the cases provided for in article second, title fourth, chapter second, part third of the Revised Statutes, the plaintiff shall by his own affidavit, or that of some other person or persons, prove to the satisfaction of the justice, the facts and circumstances to entitle him to the same, and that he has such a claim as is specified in the last preceding section against the defendant, over and above all discounts which the defendant may have against him, specifying, as near as may be, the amount of such claim or the balance thereof; and such plaintiff, or some one in his behalf, shall also execute in the cases provided for by this act, a bond in the penalty of at least one hundred dollars, with such sureties, and upon such condition as is required in section twenty-ninth of said article; and so much of said article as requires any other or different proof for the issuing of an attachment, than that required by this section, is hereby repealed.

In what
cases to be
so com-
menced.

14 B., 96; 4 D., 94, 118, 592; 3 D., 60; 1 D., 184; 23 W., 336; 20 W., 184; 16 W., 565; 15 W., 479; 14 W., 237; 12 W., 360.

§ 36. Every attachment issued by virtue of this act, or of the provisions contained in the said second article, shall be served in the manner now provided in said article, except that if the defendant can be found in the county, the copy of such attachment and inventory, shall be served upon him personally instead of leaving the same at the place now prescribed in said article: and the return of said officer, in addition to what is now required, shall state specifically whether such copy was or was not personally served upon the defendant.

Attach-
ments how
to be
served.

3 D., 318; 2 Hilt., 216.

§ 37. If such attachment was issued in one of the cases provided for by this act, and shall be returned personally served upon the defendant, the justice shall, on the return

Proceed-
ings on
return.

PART II.

Summons
may issue.

day, proceed to hear and determine the cause in the same manner as upon a summons returned personally served.

§ 38. If such attachment was issued in one of the cases provided for by this act, and at the return day it shall appear by the return, that property was attached, and that a copy of such inventory and attachment was not personally served, and the defendant shall not appear, the plaintiff may take out a summons against the defendant; and if such summons shall be returned that the defendant cannot be found after diligent inquiry, or that the same has been personally served upon the defendant, then, in either case, the justice shall proceed to hear and determine the cause in the same manner as upon a summons returned personally served.

9 B., 378.

Effect of
judgment.

§ 39. A judgment obtained before any justice, in any suit commenced by attachment, when the defendant shall not be personally served with the attachment or summons, and shall not appear, shall be only presumptive evidence of indebtedness, in any suit that may be brought thereon, and may be repelled by the defendant; and no execution issued upon such judgment shall be levied upon any other property than such as was seized under the attachment issued thereon; nor shall any defendant, in such case, be barred of any set-off which he may have against the plaintiff.

1 B. Ch., 571.

Bond on
adjourn-
ment.

§ 40. A defendant, against whose body, by the provisions of this act, an execution cannot be issued from a justice's court, shall not be required, in order to obtain an adjournment of a cause, to give a bond with the condition now required by law, but instead thereof, the condition of such bond shall be, that no part of his property liable to be taken on execution shall be removed, secreted, assigned, or in any way disposed of, except the necessary support of himself and family, until the plaintiff's demand shall be satisfied, or until the expiration of ten days after such plaintiff shall be entitled to have an execution issued on the judgment obtained in such cause, if he shall obtain such judgment, and if the condition of such bond be broken, and an execution on such judgment be returned unsatisfied in whole or in part, the plaintiff, in an action on such bond, shall be entitled to recover the amount due on such judgment.

4 D., 116.

Repeal of
Revised
Statutes.

§ 41. Sections one hundred and thirty-seven, one hundred and thirty-eight and one hundred and thirty-nine, of title fourth, chapter second and part third of the Revised Statutes are hereby repealed.

Costs.

§ 42. When judgment shall be rendered against the defendant, no more than two summonses, and the services of the two summonses, shall be included in the costs of such judgment.

CHAP. V.
Revised
Statutes
retained.

§ 43. All the provisions of said title fourth, not hereby expressly repealed, and not inconsistent with the provisions of this act, are hereby declared to be in full force, and to apply to the provisions of this act, so far as the same relate to proceedings in courts before justices of the peace.

13 B., 634; 4 D., 592; 23 W., 336.

§ 44. All persons imprisoned at the time this act shall take effect as a law, by virtue of any execution issued upon a judgment recovered before any justice, upon any contract, express or implied, shall be discharged from such imprisonment, as in the next section provided, unless the plaintiff in such execution shall, on or before that day, file with the jailer an affidavit, stating such facts as would authorize an execution against the body of the defendant, according to the twenty-ninth section of this act.

Discharge
of persons
then con-
fined.

§ 45. To entitle such imprisoned debtor to such discharge, he shall present to the jailer or sheriff in whose custody he shall be, an affidavit setting forth that the execution, by virtue of which he is imprisoned, issued upon a judgment obtained on a contract, express or implied, or obtained on a judgment founded on such contract; and thereupon he shall be discharged, and the sheriff shall not be liable to any action for such discharge.

How to be
obtained.

§ 46. Any person imprisoned on any process issued out of any court, who shall be entitled to be discharged from such imprisonment under the provisions of this act, may bring a writ of habeas corpus or certiorari for that purpose, in the manner provided in the ninth chapter of the third part of the Revised Statutes.

May have
habeas
corpus.

12 W., 231.

§ 47. The provisions of this act, from the twenty-ninth section inclusive, shall apply to executions, warrants and other process issued by the marine court in the city of New York, by the assistant justices for wards in the said city, and by the justices of the justices' courts of the city of Albany and of the city of Hudson, and to all proceedings in the said courts and by the said justices, in the like cases and in the same manner as herein provided in respect to justices of the peace.

Act made
applicable
to cities.

CHAP. 52.

AN ACT to provide for the payment of the costs and disbursements of attaching creditors.

PASSED March 8, 1853.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. The trustees appointed under and in pursuance of the fifth chapter of the second part of the Revised Statutes

Duty of
trustees.

PART II.Condition
in bond.

shall, out of the moneys in their hands, after deducting all the necessary disbursements made by them in the discharge of their duty and their commission, pay to the attaching creditor his costs and disbursements to be taxed.

§ 2. The bond required to be given by the fifty-fifth section of the first article of the first title of the said chapter, shall also contain a condition that in the event of its appearing that any sum of money was due to any attaching creditor, the said debtor will pay to every such creditor the costs and disbursements incurred in obtaining such attachment, and of the proceedings thereon.

12 B., 112.

CHAP. 245.

AN ACT to allow and regulate costs in cases of attachments.

PASSED May 2, 1834.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Costs

§ 1. That in cases of attachments against the property of absent, concealed, or non-resident debtors, pursuant to article first, title first, chapter fifth of the second part of the Revised Statutes, when an attorney or counsellor shall be employed to conduct the proceedings, there shall be allowed and paid out of the funds of such debtor before distribution, to the prosecuting creditor, the legal costs of such attorney and counsel, to be taxed by the judge or supreme court commissioner issuing such attachments.

Expenses.

§ 2. That for such attorney and counsel, for the necessary disbursements, and for drawing the necessary papers, the same rate of allowance shall be taxed as in cases prosecuted in the supreme court, where supreme court costs are allowable: and the like fees for attorney and counsel fee may be taxed for any attendance before the trustees, as are now taxable upon a reference in the supreme court.

CHAP. 418.

AN ACT to amend the fifth subdivision of section ten of the act, entitled "An act to abolish imprisonment for debt, and to punish fraudulent debtors," passed April 26, 1831.

PASSED May 13, 1837.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Amend-
ment.

§ 1. The fifth subdivision of section ten of the act entitled "An act to abolish imprisonment for debt, and to punish

fraudulent debtors," passed April 26, 1831, shall apply only in cases where the particular fraudulent design established against the defendant, is only that specified in the first subdivision in the fourth section of the act hereby amended.

CHAP. 138.

AN ACT in relation to fraudulent debtors.

PASSED March 30, 1838.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. A judgment rendered by and before a justice of the peace for any sum exceeding the sum of twenty-five dollars, exclusive of costs, a transcript whereof shall have been filed and docketed in the clerk's office pursuant to the provisions of article eight, title four, chapter two, part three of the Revised Statutes, shall be deemed and taken to be a judgment in the court of common pleas of the county where such transcript shall have been filed and docketed for all the purposes contemplated by the act entitled "An act to abolish imprisonment for debt, and to punish fraudulent debtors;" and the plaintiff may proceed in like manner as if such judgment had been obtained in a court of common pleas: and such plaintiff and defendant shall be entitled to the same rights and privileges as are conferred on parties to suits in courts of record under the last mentioned act and the acts amending the same.

Effect of judgment rendered before justice for any sum above \$25.

2 N. Y., 104.

§ 2. Instead of the evidence that the plaintiff has a debt or demand of over fifty dollars, as required by the fourth section of the last mentioned act, it shall be sufficient for the plaintiff to adduce such evidence that he has a judgment against the defendant of over twenty-five dollars, exclusive of costs, a transcript whereof has been filed in the clerk's office as aforesaid.

Evidence of such judgment.

§ 3. The costs, fees and expenses of the proceedings under this act, and under the act last aforesaid, for the arrest and trial of a defendant, shall in all cases be made out by stating the particular charges, and be taxed by the officer before whom such proceedings shall be had: but no counsel, retaining or trial fee shall be allowed either party; nor shall the costs in any case be taxed against the opposite party exceed the sum of ten dollars, where the demand claimed by the plaintiff shall exceed fifty dollars, nor more than five dollars where the demand claimed by the plaintiff shall be fifty dollars or less.

Costs, fees and expenses.

4 H., 540; see Laws of 1848, ch. 48.

CHAP. 165.

AN ACT to amend the act abolishing imprisonment for debt.

PASSED April 25, 1840.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

As to non-residents.

§ 1. So much of the act entitled "An act to abolish imprisonment for debt, and to punish fraudulent debtors," passed April 26, 1831, as declares that the provisions in the first section thereof shall not extend to any person who shall not have been a resident of this state for at least one month previous to a suit commenced against him, is hereby repealed.

1 D., 175.

CHAP. 377.

AN ACT further to amend the act entitled "An act to abolish imprisonment for debt and to punish fraudulent debtors," passed April 26, 1831.

PASSED May 14, 1840.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Bond to be given to entitle to postponement.

§ 1. Whenever any defendant shall be arrested by virtue of a warrant issued in pursuance of the third and fourth sections of the said act, such defendant shall not be entitled to have the hearing adjourned or postponed, as mentioned in the seventh section of the said act, unless such defendant, in addition to the requirements of the said seventh section, enter into a bond to the plaintiff, in a penalty of not less than twice the amount of the debt or demand claimed, with such sureties as shall be approved by the officer issuing the warrant, conditioned that, until the final decision of the matter pending before such officer, such defendant will not remove any property which he then has out of the jurisdiction of the court in which the suit in which such warrant is issued is brought, with intent to defraud any of his creditors; and that he will not assign or dispose of any such property with intent or with a view to give a preference to any creditor for any debt antecedent to such assignment or disposition.

Clause repealed.

§ 2. The first subdivision of the thirtieth section of the said act is hereby repealed.

CHAP. 242.

AN ACT to amend so much of part second of chapter five of the Revised Statutes as relates to attachments against non-residents or absconding debtors.

PASSED May 25, 1841.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. It shall be lawful for the owners or masters of any ship or vessel on board of which the goods of any non-resident, concealed or absconding debtor shall have been shipped in good faith, for the purpose of transportation, without re-shipment or transshipment in this state, to any port or place out of this state, to transport and deliver such goods according to their destination, notwithstanding the issuing of any attachment against such debtor, unless the attaching creditor, his agent or attorney, shall execute a bond with sufficient sureties to any or either of the owners or masters of the vessel on board of which such goods shall be shipped, conditioned to pay such owner or master all expenses, damages and charges which may be incurred by such owners or master or to which they may be subjected for unlading said goods from said vessel, and for all necessary detention of said vessel for that purpose.

Rights of owners or masters of vessels secured.

§ 2. This act shall not extend to any case where such owner or master, either before or at the time of the shipment of such goods, shall have received actual information of the issuing of such attachment, nor where the owner or the master of any vessel have in any wise connived at or been privy to the shipment of such goods for the purpose of screening them from legal process, or for the purpose of hindering, delaying or defrauding creditors.

Saving clause.

CHAP. 214.

AN ACT further to amend the "Act to abolish imprisonment for debt, and to punish fraudulent debtors," passed April 26, 1831.

PASSED May 13, 1845.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. Any person who may have been arrested or imprisoned as a fraudulent debtor, by the order of any judge or other officer, under and by virtue of the "Act to abolish imprisonment for debt and to punish fraudulent debtors," passed April 26, 1831, and who shall have been adjudged guilty of either

Provision on putting in and perfecting special bail.

PART II.

of the frauds specified in the fourth section of the said act, in addition to the case provided for by the seventeenth section of the said act, shall also be entitled to the discharge provided for by the said section, upon his putting in and perfecting special bail in any suit which shall have been commenced against him by the creditor upon whose complaint he may have been arrested, whether a judgment or decree shall have been obtained therein or not.

See Laws of 1846, ch. 209.

Liability to imprisonment on execution issued.

§ 2. Any person who may have put in and perfected special bail in any suit, pursuant to the provisions of the foregoing section, shall be liable to be imprisoned upon any execution to be issued against his body in such suit, in the same manner as though the act hereby amended had not been passed.

CHAP. 158.

AN ACT in relation to the appointment of assignees and trustees of non-resident, absconding, insolvent, or imprisoned debtors.

PASSED May 9, 1846.

The People of the State of New York, represented in Senate and Assembly, do enact as follows :

In case of absence other assignees or trustees to be appointed.

§ 1. Whenever any assignee or trustee appointed under any authority conferred by any of the provisions of title one, chapter five and part two of the Revised Statutes, or of any previous statute relating to insolvent or imprisoned debtors, shall have removed from and shall have continued to reside out of this State for one year, or shall hereafter remove from and shall continue to reside out of this State for one year, it shall be lawful for the officer who originally appointed such assignee or trustee, or in case of his absence, death, or removal, his successor in office, or any other officer residing in the county where such assignee or trustee was resident, who by law would originally have been authorized and empowered to make an appointment of such assignee or trustee, after giving notice and an opportunity to the creditors to propose proper persons, to appoint another person in the place of such assignee or trustee so removed or to remove as aforesaid.

10 B., 534.

Their powers and duties.

§ 2. The assignee or trustee appointed in the place of the assignee or trustee so removed, or to remove as aforesaid, shall in all respects have the like powers and authority, and be subject to the same control, obligations and responsibilities as the assignee or trustee originally appointed; and the appointment of an assignee or trustee under the provisions of this act shall be certified and recorded as the original appointment was required to be recorded.

CHAP. 209.

AN ACT further to amend the "Act to abolish imprisonment for debt, and to punish fraudulent debtors," passed April 26, 1831.

PASSED May 12, 1846.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. The first section of the act passed May 13, 1845, entitled "An act further to amend the act to abolish imprisonment for debt, and to punish fraudulent debtors," passed April 26, 1831, shall not apply to the case of a person arrested or imprisoned for either of the frauds specified in either of the first three subdivisions of the fourth section of the "Act to abolish imprisonment for debt, and to punish fraudulent debtors," passed April 26, 1831.

First section of act of 1845 not to apply in certain cases.

CHAP. 366.

AN ACT relating to proceedings of insolvents to obtain a discharge from their debts.

PASSED November 16, 1847.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. Whenever an order shall be made by any judge or officer under the provisions of the third article of the fifth chapter of the first title of the second part of the Revised Statutes, requiring cause to be shown why an assignment of an insolvent's estate shall not be made, and he be discharged from his debts, it shall be the duty of the said judge or officer, in addition to the publication of the said notice, as provided in the tenth section of the said article, to direct in all cases where any of the creditors of the said insolvent reside in the United States, and where the place of such residence is known to the said insolvent, the service of notice of such order on each of said creditors in person or by letter, addressed to him by mail at his known and usual place of residence, and if such service shall be personal, it shall be at least twenty days, and if by mail, then forty days before the day fixed for showing cause against such discharge.

Notice, how to be served on creditors of insolvents in the United States.

§ 2. The said judge shall not proceed to hear the proof and allegations of the parties in the matter, nor shall any proceedings be had on the day appointed to show cause, until proof shall have been given to the satisfaction of the said judge or officer, of the service of the said notice, in the manner required by this act. Provided, however, that nothing herein contain-

Saving clause.

Provido.

PART II.

ed shall be deemed to apply to any proceedings commenced before this act shall take effect.

CHAP. 48.

AN ACT to amend the several acts in relation to fraudulent debtors.

PASSED February 18, 1848.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Provisions
extended to
Albany,
Troy and
Hudson.

§ 1. All the provisions of the act entitled "An act in relation to fraudulent debtors," passed March 30th, 1838, shall extend to judgments rendered before the justices' courts of the cities of Albany, Troy and Hudson.

Applica-
tion under
act of 1831
to whom
made.

§ 2. Applications for a warrant, under and in pursuance of the provisions of the act entitled "An act to abolish imprisonment for debt, and to punish fraudulent debtors," passed April 26th, 1831, and the several acts amending the same, may be made to any judge of a court of record in any county in which the judgment on which the complaint is grounded, is docketed, and in which the defendant resides.

26 B., 259.

CHAP. 210.

AN ACT to enable trustees, receivers, and assignees to become petitioning creditors under article third, title first, chapter fifth, part second, of the Revised Statutes.

PASSED April 8, 1850.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Trustees,
receivers,
&c., may
become
petitioning
creditors.

§ 1. Trustees, receivers, and assignees of the estate of any creditor of an insolvent, whether created by operation of law or by the act of parties, may become petitioning creditors for the discharge of an insolvent under the third article, title one, chapter five and part second of the Revised Statutes under the order of a justice of the supreme court; and shall be chargeable only for such sum as they shall actually receive on the dividend of the insolvent estate.

Affidavit to
be made by
them.

§ 2. Such trustees, receivers, or assignees shall make and annex to their petition the affidavit which is required to be made by other petitioning creditors by the fourth section of the said third article, except that they may state in such affidavit the nature of the demand in respect to which they become petitioning creditors, and whether arising on any written security or otherwise with the general ground and consi-

deration of such indebtedness or information and belief, setting forth the grounds of their belief, and their affidavit shall be accompanied by the affidavit of the insolvent as to all matters which are so stated on information and belief.

CHAP. 314.

AN ACT to declare and extend the powers of executors, assignees, receivers and other trustees, and to protect the rights of creditors and others, against frauds, and for other purposes.

PASSED April 17, 1858; three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. That any executor, administrator, receiver, assignee, or other trustee of an estate, or the property and effects of an insolvent estate, corporation, association, partnership or individual, may for the benefit of creditors or others interested in the estate or property so held in trust, disaffirm, treat as void, and resist all acts done, transfers and agreements made, in fraud of the rights of any creditor, including themselves and others, interested in any estate or property held by or of right belonging to any such trustee or estate.

Trustees,
&c., may
impeach
assign-
ments.

§ 2. That every person who shall, in fraud of the rights of creditors and others, have received, taken, or in any manner interfered with, the estate, property or effects of any deceased person, or insolvent corporation, association, partnership or individual, shall be liable in the proper action to the executors, administrators, receivers, or other trustees of such estate or property, for the same, or the value of any property or effects so received or taken, and for all damages caused by such acts to any such trust estate.

And have
actions
against
offenders.

§ 3. That any endorser or other surety, and any assignee, executor, administrator, or other trustee, shall be entitled to and allowed to recover from his principal or cestui que trust, all necessary and reasonable costs and expenses paid or incurred by him in good faith, as surety or trustee in the prosecution or defense in good faith of any action by or against any assignee, executor, administrator, or other trustee as such.

May recover
costs of
cestui que
trust.

CHAP. 348.

AN ACT to secure to creditors a just division of the estates of debtors who convey to assignees for the benefit of creditors.

PASSED April 13, 1860; three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Convey-
ances to be
in writing
duly
acknow-
ledged.

§ 1. Every conveyance or assignment made by a debtor or debtors, of his, her, or their estates, real or personal, or both, in trust, to an assignee or assignees, for the creditors of such debtor or debtors, shall be in writing, and shall be duly acknowledged before an officer authorized to take the acknowledgment of deeds, and the certificate of such acknowledgment shall be duly indorsed upon such conveyance or assignment before the delivery thereof to the assignee or assignees therein named.

Inventory
to be de-
livered to
county
judge.

§ 2. Every debtor or debtors so making an assignment shall, at the date thereof, or within twenty days thereafter, make and deliver to the county judge of the county in which such debtor or debtors resided at the date of such assignment, an inventory or schedule containing:

What to
contain.

1. A full and true account of all the creditors of such debtor or debtors.

2. The place of residence of each creditor, if known to such debtor or debtors, and if not known, the fact to be so stated.

3. The sum owing to each creditor, and the nature of each debt or demand, whether arising on written security, account or otherwise.

4. The true cause and consideration of such indebtedness in each case, and the place where such indebtedness arose.

5. A statement of any existing judgment, mortgage, collateral or other security for the payment of any such debt.

6. A full and true inventory of all such debtors' estate at the date of such assignment, both real and personal, in law and in equity, and the incumbrances existing thereon, and of all vouchers and securities relating thereto, and the value of such estate according to the best knowledge of such debtor or debtors.

7. An affidavit shall be made by such debtor or debtors, and annexed to, and delivered with such inventory or schedule, that the same is in all respects just and true, according to the best of such debtor or debtors' knowledge and belief.

Assignees
to give
bond.

§ 3. The assignee or assignees named in any such assignment shall, within thirty days after the date thereof (and before he shall have power or authority to sell, dispose of, or convert to the purposes of the trust, any of the assigned property), enter into a bond to the people of the state of New

York, in an amount to be ordered and directed by the county judge of the county where such debtor or debtors resided at the date of such assignment, with sufficient sureties to be approved of by such judge, and conditioned for the faithful discharge of the duties of such assignee or assignees, and for the due accounting for all moneys received by such assignee or assignees, which bond shall be filed in the county clerk's office where the assignment is recorded.

§ 4. After the lapse of one year from the date of such assignment the county judge of the county where such inventory is filed, shall, upon the petition of any creditor of such debtor or debtors, have power to issue a citation or summons, compelling such assignee or assignees to appear before him, and show cause why an account of the trust fund created by any such assignment, shall not be made, and to decree payment of such creditors' just proportional part of such fund; and such county judge shall also have the same power and jurisdiction to compel such accounting as is now possessed by surrogates in relation to the estates of deceased persons; and also power to examine the parties to such assignment and other persons on oath, in relation to such assignment and accounting, and all matters connected therewith, and to compel their attendance for that purpose; and the parties interested in such accounting shall have the same rights to appeal from any order or decree of such judge in the premises, as is now given from the decrees of surrogates in relation to the accounts of executors and administrators.

§ 5. Whenever any such assignee or assignees shall omit or refuse to perform any decree or order made against him, her or them, by a judge or court having jurisdiction to compel the payment of any debt out of such trust fund, such county judge or court may order the bond of such assignee or assignees to be prosecuted in the name of the people by the district attorney of the county where the said bond is filed, and shall apply the moneys collected thereon in satisfaction of the debts of said debtor or debtors, in the same manner as the same ought to have been applied by such assignee or assignees.

§ 6. Every conveyance or assignment made by any debtor or debtors under the provisions of this act, shall be recorded in the clerk's office of the county in which such debtor or debtors resided at the date thereof; and every inventory of the property of such debtor or debtors made under the provisions of this act, shall be filed in the same office where such assignment is recorded.

County
judge may
issue sum-
mons.

Am. Rev.
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68-4
Less 100
100/619-13

Duty of
county
judge in
certain
cases.

Conveyan-
ces, &c., to
be recorded
in county
clerk's
office.

CHAPTER VI.

Wills and Administration of Estates.

CHAP. 308.

AN ACT to amend article third of title second of chapter sixth of part second of the Revised Statutes.

PASSED May 6, 1834.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Where
officer is
subscribing
witness.

§ 1. In any case where a surrogate who would have exclusive jurisdiction to admit to probate any will, or grant letters testamentary, or of administration upon any estate, is a subscribing witness to said will, the same may be proved before the first judge of the county courts of the said county in which said surrogate would have such exclusive jurisdiction, and the said first judge may grant letters testamentary or of administration, in the same manner and with like effect as the said judge is now authorized to do by the third article of title second of chapter sixth of part second of the Revised Statutes, in cases where the said surrogate is precluded from acting by the said article.

CHAP. 460.

AN ACT concerning the proof of wills, executors and administrators, guardians and wards, and surrogates' courts.

PASSED May 16, 1837.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Jurisdic-
tion of
surrogate
over proof
of wills; in
what cases
enumera-
ted.

§ 1. The surrogate of each county shall have jurisdiction, exclusive of every other surrogate, within the county for which he may be appointed, to take the proof of last wills and testaments of all deceased persons, in the following cases:

1. Where the testator at, or immediately previous to, his death, was an inhabitant of the county of such surrogate, in whatever place such death may have happened:

2. Where the testator, not being an inhabitant of this state, shall die in the county of such surrogate, leaving assets therein:

3. Where the testator, not being an inhabitant of this state, shall die out of the state, leaving assets in the county of such surrogate:

4. Where a testator not being an inhabitant of this state, shall die out of the state, not leaving assets therein, but assets of such testator shall thereafter come into the county of such surrogate:

5. Where no surrogate has gained jurisdiction under either of the preceding clauses, and any real estate devised by the testator shall be situated in the county of such surrogate.

11 N. Y., 327; 10 B., 581.

§ 2. So much of section seventh, title first, chapter second, part third of the Revised Statutes, as requires the surrogate to record the accounts of administrators, executors and guardians rendered before him, is hereby repealed: but the surrogate shall file said accounts, and shall record, with his decree, a summary statement of the same as the same shall be finally settled and allowed by him, which shall be referred to and taken as part of the final decree.

Accounts of executors, &c. not to be recorded.

§ 3. Every surrogate shall keep a book of fees, which shall pertain to his office, and be subject to inspection in the same manner that his books of records are, in which he shall enter at length and by items the fees charged and received by him on all proceedings had before him under the name of each intestate or testator.

Surrogate to keep book of fees.

§ 4. The executor, devisee or legatee named in any last will, or any person interested in the estate, may have such will proved before the proper surrogate.

Who may have will proved.

16 B., 143; 3 B., 417.

§ 5. On application to the surrogate, he shall ascertain by satisfactory evidence, the following facts:

What parts to be proved upon offering will for probate, &c.

1. If the will relate exclusively to real estate, the names and places of residence of the heirs of the testator, or that upon diligent inquiry the same cannot be ascertained:

2. If the will relate exclusively to personal estate, the names and places of residence, of the widow and next of kin of the testator, or that upon diligent inquiry the same cannot be ascertained:

3. If the will relate to both real and personal estate, the names and places of residence of the heirs, widow and next of kin of the testator, or that, upon diligent inquiry, the same cannot be ascertained.

16 B., 143.

§ 6. The surrogate shall also ascertain whether any and which of the persons mentioned in the preceding section are minors, and the names and places of residence of their general guardians, if they have any; and if there shall be no general guardian within this state, the surrogate shall by an order to be entered, appoint a special guardian for such minor, to take care of his interests in the premises; and the written consent of every person so appointed special guardian to serve as such, shall be filed with the surrogate. The testamentary guardian named in the will to be proved, shall not for this purpose be deemed a general guardian.

Special guardians to be appointed on proof, &c.

PART II.
Citation to
be issued to
proper per-
sons by
name, &c.

§ 7. The surrogate shall thereupon issue a citation requiring the proper person, at such time and place as shall be therein mentioned, to appear and attend the probate of the will; the citation shall state who has applied for the proof of the will, and whether it relate exclusively to either real or personal estate, or to both real and personal estate: it shall be directed to the proper persons by name, stating their places of residence, or if any of them are minors, to their guardians by name, stating their places of residence. If the name or place of residence of any person who ought to be cited cannot be ascertained, such fact shall be stated in the citation.

Manner of
serving
citation.

§ 8. The citation shall be served on the persons to whom it is directed as follows:

1. On such as reside in the same county with the surrogate, or an adjoining county, by delivering a copy to such person, at least eight days before the day appointed for taking the proof; or by leaving a copy at least eight days as aforesaid, at the dwelling house or other place of residence of such person, with some individual of suitable age and discretion, and under such circumstances as shall induce a reasonable presumption in the mind of the surrogate, that the copy came to the hands or knowledge of the person to be served with it, in time for him to attend the probate of the will:

2. On such as reside in any other county in this state, by delivering a copy personally to such person, or leaving it at his dwelling house or other place of residence, in the manner and under the circumstances above mentioned, at least fifteen days before the day appointed for taking the proof:

3. On such persons as do not reside in this state, citations may be served by delivering a copy personally to such persons, or leaving it at his or her dwelling house or other place of residence, not less than fifteen days nor more than ninety days before the day appointed for taking proof of any will; and on such persons as do not reside in this state, or whose places of residence cannot be ascertained, by publishing a copy of the citation in the state paper for six weeks previous to the day appointed for taking the proof.

As amended by Laws of 1840, ch. 384.

Proof of
service to
be made of
do.

§ 9. Before proceeding to take the proof of any will, the surrogate shall require satisfactory evidence by affidavit, of the service of the citation, in the mode prescribed by law. If it has not been duly served on all the persons who ought to receive notice, the surrogate may adjourn the proceeding and issue a further citation for the purpose of bringing in such persons.

What neces-
sary to
establish
will.

§ 10. Upon proof being made of the due service of the citation, the surrogate shall cause the witnesses to be examined before him. All such proofs and examinations shall be reduced to writing. Two at least of the witnesses to such will, if so many are living in this state, and of sound mind, and are

not disabled from age, sickness or infirmity from attending, shall be produced and examined; and the death, absence, insanity, sickness or other infirmity of any of them, shall be satisfactorily shown to the surrogate taking such proof: the surrogate shall inquire particularly into the facts and circumstances before establishing the same or granting letters testamentary or of administration thereof.

§ 11. In case the proof of any such will is contested, and any person having the right to contest the same shall, before probate made, file with the surrogate a request in writing that all the witnesses to such will shall be examined; then all the witnesses to such will, who are living in this state, and of sound mind, and who are not disabled from age, sickness or infirmity, from attending, shall be produced and examined: and the death, absence, insanity, sickness, or other infirmity of any of them, shall be satisfactorily shown to the surrogate taking such proof.

When all the witnesses to be examined.

See Laws of 1841, ch. 129; 19 B., 33.

§ 12. If any such aged, sick or infirm witness reside in the same county with the surrogate, it shall be the duty of the surrogate, after examining the other witnesses, to proceed without unnecessary delay to the dwelling house or other place of residence of such witness, and there, in the presence of such persons as may choose to attend, proceed to take the examination of such witness, in the same manner, and with the like effect, as though such witness had attended and been examined before the surrogate on the return of the citation.

Duty of surrogate when witness sick.

See Laws of 1841, ch. 129.

§ 13. If such aged, sick or infirm witness reside in a different county from the surrogate, and it shall not be probable that his attendance can be procured within a reasonable time to which the surrogate may in his discretion adjourn the proceeding for that purpose, the surrogate may in such case, after having examined the other witnesses, make an order adjourning the proceeding in his court to some future day, and directing that such aged, sick or infirm witness be examined before the surrogate of the county in which he resides, and specifying some Monday on or before which the said order shall be delivered to the surrogate directed to take the examination: a copy of which order, under the seal of the surrogate making the same, together with the original will, shall be delivered to the person applying for the probate, to be transmitted to the surrogate directed to take the examination.

When other surrogate to examine witness.

See Laws of 1841, ch. 129.

§ 14. The surrogate by whom any such order and will shall be received, shall, on the Monday mentioned in such order, appoint a time and place for taking such examination, and give notice thereof to any person who may attend such surrogate for the purpose of hearing such examination; and at

Duty of such surrogate in that case.

PART II.

the time and place so appointed, or at such other time and place as it may be found necessary to designate by adjournment, the surrogate, in the presence of such persons as may choose to attend, shall proceed to take the examination of such aged, sick or infirm witness, in the same manner and with the like effect as though such witness had attended and been examined before the surrogate having original jurisdiction on the return of the citation. Such surrogate may issue subpoenas under his seal of office, to compel the attendance of any such witness or witnesses, for the purposes aforesaid, in like manner and with the like effect as in cases in which he has original jurisdiction.

See Laws of 1841, ch. 129.

Examination to be signed by witness.

§ 15. Such examination shall be reduced to writing and be subscribed by the witness; and the examination, together with a statement of the proceedings before the surrogate taking the same, shall be certified by him under his seal of office, and be returned without delay to the surrogate who ordered such examination.

See Laws of 1841, ch. 129.

Surrogate to determine the sufficiency of the proof of any such will.

§ 16. Upon the deposition so returned, together with such other proofs as may have been adduced before him, the surrogate to whom the original application was made, shall, on the day to which the proceeding in his court had been adjourned, or as soon thereafter as practicable, proceed to determine on the sufficiency of the proof of any such will.

See Laws of 1841, ch. 129; 9 Pal., 123.

Oath of person producing will in all cases to be taken, &c.

§ 17. No written will or real or personal estate, or both, shall be deemed proved, until the witnesses to the same residing within this state at the time of such proof, of sound mind and competent to testify, shall have been examined pursuant to law, as herein before prescribed; and in all cases the oath of the person who received the will from the testator, if he can be produced, together with the oath of the person presenting the same for probate, stating the circumstances of the execution, the delivery, and the possession thereof, may be required; and before recording any will, or admitting the same to probate, the surrogate shall be satisfied of its genuineness and validity.

2 B., 387.

§ 18. The tenth, eleventh, fourteenth and fifteenth sections of title first, chapter sixth, of the second part of the Revised Statutes, shall be applicable to wills of both real and personal estate, or either; and the said tenth section shall apply to proceedings by citation under this act, in the same manner that it now applies to proceedings on notice.

6 N. Y., 198.

Will recorded as real estate.

§ 19. When any will shall be recorded as a will of real estate, it shall not be necessary to record the same as a will of personal estate.

§ 20. If all the witnesses to a will shall be dead, insane, out of the state, or incompetent to testify, the surrogate may take and receive proof of the hand writing of the testator and of the subscribing witnesses, and of such other facts and circumstances as would be proper to prove such will on a trial at law; and if such proof shall be satisfactory to the surrogate, the will may be admitted to probate, and be recorded as a will of personal estate only, and so as to affect only the personal estate of the testator.

CHAP. VI.
If all witnesses to will be dead, what, &c.

§ 21. The surrogate shall enter in his minutes the decision which he may make concerning the sufficiency of the proof or validity of any will which may be offered for probate; and in case he shall decide against the sufficiency of the proof or the validity of any such will, he shall without fee or charge, state the ground upon which the decision is made, if required by either party.

Surrogate to enter in minutes his decision, &c.

§ 22. Letters testamentary may be granted at any time after the will shall be proved, unless an affidavit shall be made by a widow, legatee, next of kin, or creditor of the testator, setting forth that such person intends to file objections against the granting of such letters testamentary, and that he is advised and believes that there are just and substantial objections to the granting of such letters to the executors named in the will, or some one or more of them. And upon filing such affidavit with the surrogate, he shall stay the granting of letters testamentary for at least thirty days, unless the matter shall be sooner disposed of.

Letters testamentary to be granted any time after proof of will, witness, &c.

24 N. Y., 166.

§ 23. In case of a contest relative to the proof of a will, or relative to granting letters testamentary or of administration, with the will annexed, or of administration in case of intestacy, or when, by reason of absence from this state of any executor named in a will, or for any other cause, a delay is necessarily produced in granting such letters, the surrogate authorized to grant the same, may, in his discretion, issue special letters of administration, authorizing the preservation and collection of the goods of the deceased.

Special letters of administration in certain cases to be granted.

12 B., 325.

§ 24. Every collector so appointed shall have authority to collect the goods, chattels, personal estate and debts of the deceased, and to secure the same at such reasonable expense as the surrogate shall allow, and for those purposes he may maintain suits as administrator. Under the direction of the surrogate he may sell such of the goods of the deceased as shall be deemed necessary for the preservation and benefit of the estate, after the same shall have been appraised. Sections forty, forty-one and forty-three, of title second, chapter six, of the second part of the Revised Statutes, shall apply to every such collector.

Authority of such collector.

Duty, &c.

19 B., 33.

PART II.

When sureties are becoming insolvent, or are about to remove, &c.

§ 25. Whenever any person interested in the estate of the deceased shall discover that the sureties of any executor or administrator are becoming insolvent, that they have removed or are about to remove from this state, or that for any other causes they are insufficient, such person may make application to the surrogate who granted the letters testamentary or of administration for relief.

As amended by Laws of 1862, ch. 229.

Executor or administrator to be cited to show cause in regard to sureties.

§ 26. If the surrogate shall receive satisfactory evidence that the matter requires investigation, he shall issue a citation to such executor or administrator requiring him to appear before such surrogate, at a time and place to be therein specified, to show cause why he should not give further sureties or be superseded in the administration; which citation shall be served personally on the executor or administrator at least six days before the return day thereof; or if he shall have absconded or cannot be found, it may be served by leaving a copy at his last place of residence.

As amended by Laws of 1862, ch. 229.

If sureties insufficient, further sureties may be required.

§ 27. On the return of the citation, or at such other time as the surrogate shall appoint, he shall proceed to hear the proofs and allegations of the parties, and if it shall satisfactorily appear that the sureties are for any cause insufficient, the surrogate may make an order requiring such executor or administrator to give further sureties in the usual form within a reasonable time, not exceeding five days.

As amended by Laws of 1862, ch. 229.

When surrogate to revoke letters testamentary or administration.

§ 28. If such executor or administrator neglect to give further sureties to the satisfaction of the surrogate within the time prescribed, the surrogate shall by order revoke the letters testamentary or of administration issued to such executor or administrator whose authority and rights as an executor or administrator shall thereupon cease.

As amended by Laws of 1862, ch. 229.

Sureties may make application to surrogate for relief.

§ 29. When either or all of the sureties of any executor or administrator shall desire to be released from responsibility on account of the future acts or defaults of such executor or administrator, they may make application to the surrogate who granted letters testamentary or of administration for relief.

As amended by Laws of 1862, ch. 229.

19 B., 33.

Executor and administrator to give new sureties.

§ 30. The surrogate shall thereupon issue a citation to such executor or administrator requiring him to appear before such surrogate at a time and place to be therein specified, and give new sureties in the usual form for the faithful discharge of his duties, which citation shall be served in the manner prescribed by the second section of this act.

As amended by Laws of 1862, ch. 229.

§ 31. If such executor or administrator shall give new sureties to the satisfaction of the surrogate, the surrogate may thereupon make an order that the surety or sureties who applied for relief in the premises, shall not be liable on their bond for any subsequent act, default or misconduct of such executor or administrator.

As amended by Laws of 1862, ch. 229.

§ 32. If such executor or administrator neglect to give new sureties to the satisfaction of the surrogate, on the return of the citation, or within such reasonable time as the surrogate shall allow, not exceeding five days, the surrogate shall by order revoke the letters testamentary or of administration issued to such executor or administrator whose authority and rights as an executor or administrator shall thereupon cease.

As amended by Laws of 1862, ch. 229.

If new
sureties not
given let-
ters to be
revoked.

§ 33. In all cases in which letters testamentary or administration shall have been granted to more than one person, and the surrogate granting the same shall have revoked the same in pursuance of the previous provisions of this act, as to part only of such executors or administrators, the person or persons whose letters have not been revoked, shall have the further administration of the respective estates, subsequent to such revocation; any suit brought previous to such revocation may be continued the same as if no such revocation had taken place. In all other cases of revocation as aforesaid the surrogate shall grant administration of the goods, chattels and credits, not administered, in the manner prescribed by law.

As amended by Laws of 1862, ch. 229.

When let-
ters are
revoked, as
to part only
of several
executors
or adminis-
trators, the
others con-
tinue to
serve.

Not to af-
fect pend-
ing suits.

§ 34. Whenever it shall appear to the surrogate that letters of administration or letters of guardianship have been granted on or by reason of false representations, made by the person to whom the same were granted; and also whenever it shall appear that an administrator or guardian has become incompetent by law to act as such, by reason of drunkenness, improvidence or want of understanding, the surrogate shall have power to revoke such letters. And in case a woman marries after being appointed an executrix, administratrix or guardian, the surrogate, on the application of any person interested, shall have power to revoke such appointment.

1 B. Ch., 302; 19 B., 33.

Surrogate
to revoke
in certain
cases, &c.

§ 35. Whenever it shall appear that the penalty of the bond taken from an executor, administrator or guardian is inadequate in amount, the surrogate shall have power to make an order requiring him to give additional security for the faithful performance of his duty as such executor, administrator or guardian; and in case of non-compliance with such order the surrogate may revoke the letters granted to him.

Surrogate
may require
additional
security
when bond
is inade-
quate.

§ 36. The surrogate shall have the same jurisdiction in requiring any executor or administrator, whose letters have been

Jurisdic-
tion of sur-
rogate to

PART II.
require ac-
counting.

New execu-
tor, admin-
istrator or
other per-
son, &c.,
may require
accounting.

revoked, as hereinbefore provided, to render an account of his proceedings, as is conferred by the third article of title three, chapter six of the second part of the Revised Statutes. The new executor or administrator shall, within a reasonable time, or in case of his neglect, the other person mentioned in such article, may make application for such account, and such application may be made at any time after the revocation of the letters as aforesaid.

As amended by Laws of 1862, ch. 229.

Claim of
executor,
&c. when to
be proved.

§ 37. The proof of the debt or claim of any executor or administrator required by the thirty-third section of title three, chapter six of the second part of the Revised Statutes, may be made on the service and return of a citation for that purpose, directed to the proper persons, or on the final account of any such executor or administrator, pursuant to the third article of the said third title.

19 B., 33.

General
guardian to
appear for
minor, &c.

§ 38. Where any minor mentioned in the third section of title four, chapter six of the second part of the Revised Statutes, shall have a general guardian in the county of the surrogate, such general guardian shall appear and take care of the interest of the minor, and no special guardian shall be appointed in the premises.

Notice of
five days.

§ 39. The notice required by the fourth section of the same title, may be a notice of five days; and where the minor is under fourteen years of age, the notice shall be served on the person in whose custody he may be, or with whom he may live, or on such relative as the surrogate shall designate, instead of the service required by the said fourth section.

Executors
or adminis-
trators may
apply for
sale of real
estate, &c.

§ 40. Executors or administrators may apply to the surrogate, pursuant to the fourth title of chapter six of the second part of the Revised Statutes, for authority to mortgage, lease or sell the real estate of their testator or intestate, and for the sale of the interest of such testator or intestate, in any land held under a contract for the purchase thereof, whenever they shall discover that the personal estate of the testator or intestate is insufficient to pay his debts; subject, however, to the provisions of the first section of said title, as the same has been amended.

14 B., 29; 10 B., 250.

May apply
before dis-
position of
all the per-
sonal prop-
erty.

§ 41. The surrogate may, in his discretion, order such mortgage, lease or sale to be made, although the whole of the personal property of the deceased which has come to the hands of the executor or administrator, has not been applied to the payment of debts. But the surrogate, before making any such order, shall have satisfactory evidence that the executor or administrator has proceeded with reasonable diligence in converting the personal property of the deceased into money, and applying the same to the payment of debts.

14 B., 29.

CHAP. VI.
Contract
and assign-
ment of
ditto may
be sold sub-
ject, &c.

§ 42. The surrogate may order a sale pursuant to the sixty-sixth section of title four, chapter six of the second part of the Revised Statutes, as well where the deceased was the assignee of a contract for the purchase of land, as where he was the original purchaser. Such sales may be made subject to all payments due or to become due on the contract; and the bond required by the sixty-seventh section of the same title, shall, in such case, be conditioned for the payment of all moneys due or to become due on the contract. Such bond shall be required in all cases where the sale is made subject to payments due or to become due on the contract.

§ 43. Sales of real estates made by executors in pursuance of an authority given by any last will, unless otherwise directed in such will, may be public or private, and on such terms as, in the opinion of the executor, shall be most advantageous to those interested therein.

May be
public or
private by
executor
under will,
&c.

§ 44. The notice required by the fifth section of title three, chapter eight, of the second part of the Revised Statutes, shall be required to be served on such relatives only of the minor as the surrogate shall direct.

Notice.

9 Pal., 207; 22 B., 187.

§ 45. The fourteenth, fifteenth, sixteenth, seventeenth, eighteenth and nineteenth sections of title three, chapter eight, of the second part of the Revised Statutes, shall extend to the case of a guardian who has removed or is about to remove from this state. And in case the guardian has removed from this state, the citation mentioned in the said fifteenth section, may be served by publishing the same in the state paper for four weeks.

If guardian
has re-
moved
citation to
be pub-
lished.

§ 46. Whenever it shall be made to appear, to any surrogate, that the sureties of any guardian are becoming insolvent, that they have removed or are about to remove from this state, or that for any other cause they are insufficient, and he shall be satisfied that the matter requires investigation, he shall issue a citation to such guardian, requiring him to appear before such surrogate at a time and place to be therein specified, to show cause why he should not give further sureties or be removed from his guardianship; which citation shall be served in the same manner as the citation mentioned in the last preceding section is required by that section to be served.

Guardians
may be
removed,
&c.

§ 47. On the return of the citation, or at such other time as the surrogate shall appoint, he shall proceed to hear the proof and allegations; and if it shall satisfactorily appear that the sureties are for any cause insufficient, the surrogate may make an order requiring such guardian to give further sureties in the usual form, within a reasonable time, to be prescribed by the surrogate.

Order for
guardian to
give further
sureties,
&c.

§ 48. If such guardian neglect to give further sureties to the satisfaction of the surrogate, within the time prescribed,

Guardian to
be removed

PART II.

the surrogate may, by an order to be duly entered in his minutes, remove such guardian from his trust.

10 B., 250.

Provisions
of R. S.
extended.

§ 49. Sections seventeen, eighteen and nineteen, of title three, of chapter eight, of the second part of the Revised Statutes, shall extend to cases arising under the two preceding sections of this act.

Guardian to
account
after re-
moval.

§ 50. Where a guardian shall be removed pursuant to the aforesaid section, he may be required to account immediately, pursuant to the eleventh section of said title; and application for such account may be made by any new guardian of the minor, as well as by the persons mentioned in the said eleventh section.

May resign
his trust.

§ 51. Any guardian may apply to the surrogate by whom he was appointed, for liberty to resign his trust, setting forth the reasons why the application is made, and verifying the same by his own oath or otherwise.

19 B., 33.

Citation to
be issued to
next of kin
of ward.

§ 52. Such surrogate, in his discretion, may thereupon issue a citation to the ward, requiring him to appear at a time and place to be therein mentioned, and show cause why the guardian should not be at liberty to resign his trust. The citation shall be served by delivering a copy to the ward at least ten days before the return day thereof. Notice of the proceeding shall also be given to the next of kin of the ward if there be any of the age of discretion, in the county of the surrogate.

Special
guardian
to be ap-
pointed.

§ 53. On the return of the citation and proof of the service of the notice, the surrogate shall appoint some discreet and competent person to appear and attend to the interests of the ward in the premises, who shall consent in writing to such appointment. Any other who shall be desirous to do so, may also appear on behalf of the ward.

Guardian to
render
account.

§ 54. The guardian shall then proceed to render to the surrogate a full, just and true account, in writing, of all his receipts and payments on account of the ward, and of all the books, papers, moneys, choses in action and other property of the ward, which may be in the hands or under the control of the guardian; and shall verify the same by his own oath, and such other evidence as shall be satisfactory to the surrogate.

New guar-
dian to be
appointed.

§ 55. If the surrogate shall be satisfied that the guardian has in all respects conducted himself honestly in the execution of his trust, that he has rendered a full, just and true account, and that the interest of the ward would not be prejudiced by allowing the guardian to resign his trust, he may thereupon proceed in the mode prescribed by law, to appoint a new guardian for such ward, and order that his former guardian deliver over all the books, papers, moneys, choses in action or other property of the ward, to such new guardian, and take duplicate receipts for the same.

CHAP. VI.
Former
guardian to
be dis-
charged.

§ 56. On delivering one of the said receipts to the surrogate to be filed in his office, the surrogate may enter an order that the former guardian on his own application, has been permitted to resign his trust, and that he is thereupon discharged from any further custody or care of the ward or of his estate. But nothing herein contained shall preclude the ward or his new guardian from having a further account from such former guardian, in relation to all matters connected with his trust before he was permitted to resign the same; and in relation to all such matters, the sureties of the former guardian shall remain liable in the same manner, and to the same extent, as though such order had not been made.

§ 57. Every general guardian appointed by the surrogate shall, annually after such appointment, so long as any part of the estate, or the income or proceeds thereof remain in his hands or under his control, file in the office of the surrogate appointing him, an inventory and account under oath, of his guardianship, and of the amount of property received by him and remaining in his hands, or invested by him, and the manner and nature of such investment, and his receipts and expenditures in form of debtor and creditor.

Guardian to
account
annually.

§ 58. Every surrogate shall annex to and deliver with each appointment of a general guardian made by him, a copy of the preceding section, and shall file in his office all accounts and inventories before mentioned; and in the month of February in each year, shall examine all such accounts and inventories as shall have been filed in his office for the preceding year.

Surrogate
to annex
copy of
preceding §
to appoint-
ment of
guardian.

§ 59. The oath of office of executors and administrators, and the oath of appraisers, administrators and executors, in relation to the inventory may be administered by the surrogate or by any commissioner of deeds, supreme court commissioner or judge of county courts.

Oath of
executors,
&c.

§ 60. If on such examination the surrogate shall be satisfied, in any case that the interest of the ward requires that a more full and satisfactory account should be given, or that such guardian should be removed; or in case any guardian shall neglect to file such account and inventory for three months after the same should have been filed, such surrogate shall proceed against such guardian in the manner prescribed in the fourteenth section of title third, of chapter eight of the second part of the Revised Statutes, and sections fifteen, sixteen, seventeen, eighteen and nineteen of said title, shall extend to proceedings authorized by this section. But such surrogate may discontinue such proceedings on such guardian filing in his office an account and inventory satisfactory to said surrogate, and on payment of all costs which may have accrued in consequence of such neglect.

Guardian
may be
compelled
to render
more full
account.

§ 61. Whenever any surrogate shall issue a citation to any administrator, executor or guardian, requiring him to show cause why he should not be removed from office, the surro-

Surrogate
may enjoin
ex'r, ad-
ministrator
and guar-

PART II.
dian from
acting in
certain
cases.

May ad-
journ pro-
ceedings,
&c.

To make
certificate,
&c.

Certificate
to be filed
in supreme
court, and
be a lien on
lands, &c.

Bond to be
assigned,
&c.

Attach-
ments to
issue, &c.

To be re-
turnable to
same
county.

gate shall have power to enter an order enjoining such executor, administrator or guardian from further acting in the premises, until the matter in controversy shall be disposed of.

§ 62. The surrogate may adjourn any proceeding pending before him, from time to time, as the ends of justice may require, and may administer oaths to witnesses in any matter or cause pending before him, and in all other cases where it may be necessary in the exercise of the powers and duties of such surrogate.

§ 63. After any decree is made by a surrogate for payment of money by an executor, or administrator, or guardian, on application, he shall make out a certificate, stating the names of the parties against and in favor of whom the decree is made, with the trade, profession or occupation of the parties respectively, in their places of residence, in which he shall state the amount of debt and costs directed to be paid by such decree.

4 D., 551; 5 H., 501.

§ 64. On such certificate being filed with the clerk of any county, the same shall be entered and docketed on the books now required by law to be provided and kept for the purpose of docketing judgments, the transcripts or certificates of which shall be filed with such clerk, and shall thenceforth be a lien on all the lands, tenements, real estate and chattels real of every person against whom such decree shall be entered, situate in the county in which said surrogate's certificate may be filed, and execution shall be issued thereon in the same manner as though the same was a judgment recovered in the court of common pleas of said county.

As amended by Laws of 1844, ch. 104.

§ 65. If such execution be issued and returned unsatisfied, the surrogate shall, on application, assign the bond given by such executor, administrator or guardian, to the person in whose favor such decree is made for the purpose of being prosecuted.

§ 66. Process of attachment or other compulsory process authorized by law to enforce the orders, process or decrees of surrogates' courts, may be issued by the surrogate of one county to the officers required by law to serve such process in any other county of the state where it may be necessary to serve the same; and the officer receiving the same shall have power and authority to arrest the person or persons against whom said process is issued, and to convey the person or persons so arrested to the county and place where the writ may be returnable.

§ 67. All attachments and other compulsory process which may be issued by any surrogate, shall be made returnable to the county where the same may issue; and the tenth, twelfth and thirteenth sections; and sections sixteenth to thirty-second, title thirteenth, of chapter eighth, of the third part of

the Revised Statutes, inclusive, shall apply to attachments issued by surrogates.

§ 68. The clerks of the supreme court and the surrogates of the several counties may make exemplified copies of any last will which shall have been proved in their respective courts as a will of real estate, together with all the notices, citations and proofs relating to the same; and such exemplified copies may be recorded in the book kept for recording wills of real estate by the surrogate of any county in which any lands of the testator shall be situated. The fees for such copies and recording the same, shall be paid by the person on whose application the services shall be rendered.

Exemplified copies of records of wills, &c.

§ 69. Surrogates shall be paid the like fees for services rendered pursuant to this act, as they are now entitled to receive for similar services; and for any necessary travel required by the eighteenth and twentieth sections of this act, shall also be paid at the rate of ten cents per mile, going and returning.

Surrogates' fees.

§ 70. In all cases where the surrogate is authorized by law to award costs, he shall tax the costs at the same rate allowed for similar services in the courts of common pleas.

Common pleas costs to be taxed.

26 B., 330.

§ 71. The seventh, eighth, ninth, twelfth, twenty-third, twenty-fourth, twenty-fifth, twenty-sixth and twenty-seventh sections of title one, chapter six, of the second part of the Revised Statutes; the second, thirty-eighth and thirty-ninth sections of the second title of the said sixth chapter; the fifty-sixth section of the fourth title of said sixth chapter; so much of the first section of title one, chapter two, of the third part of the Revised Statutes, as is contained in the following words, that is to say: "and in no other; and no surrogate shall, under pretence of incidental power or constructive authority, exercise any jurisdiction whatever, not expressly given by some statute of this state," and the act entitled "An act concerning the proof of wills," passed March 18, 1834, are hereby repealed.

Repeal.

24 N. Y., 46.

§ 72. If after the rendering of, and accounting by an executor or administrator to a surrogate, as is provided in chapter six, part second, title third of the Revised Statutes, it shall appear that there are not sufficient assets to pay the debts of the deceased, the surrogate upon the application of any creditor, made at any time after the granting of letters testamentary or of administration, shall grant an order for such executor or administrator, to show cause why he should not be required to mortgage, lease or sell the real estate of the deceased, for the payment of his debts; but he shall not assign, for cause why he should not be ordered to sell real estate, that the time within which he is allowed to sell the same has expired; and where a judgment has been recovered

Creditor may require executor or administrator to show cause, &c.

PART II.

or decree obtained against an executor or administrator, for any debt due from the deceased, and there are not sufficient assets in the hands of such executor or administrator to satisfy the same, the debt for which the judgment or decree was obtained shall, notwithstanding the form of such judgment or decree, remain a debt against the estate of the deceased to the same extent as before, and to be established in the same manner as if no such judgment or decree had been obtained. Provided, that where such judgment or decree has been obtained upon a trial or hearing upon the merits, the same shall be prima facie evidence of such debt before the surrogate.

As amended by Laws of 1843, ch. 172, and 1847, ch. 298.
12 B., 401; 11 B., 362; 2 B. Ch., 164; 10 Pai., 366.

Heirs to be
prosecuted
jointly, &c.

§ 73. The heirs of any person who may be liable to any creditor of such person in consequence of lands having descended to them, shall be prosecuted jointly in a court of law or equity, and not separately, for any such liability.

28 B., 430.

Sections
repealed.

§ 74. Section forty-second, title third, part third, chapter eighth, and section forty-eighth, title fourth, part second, and chapter sixth of the Revised Statutes, are hereby repealed.

Proceeds of
sale to be
distributed.

§ 75. The proceeds of a sale of real estate made in pursuance of an authority given by any last will, may be brought into the office of the surrogate before whom such will was proved, for distribution; and the surrogate shall proceed to distribute the same in like manner and upon like notice as if such proceeds had been paid into his office in pursuance of an order of sale of real estate for the payment of debts.

1 N. Y., 211.

Manner of
serving or-
der, &c.

§ 76. When a surrogate shall make an order under the fifty-second section of part second, chapter six, title third of the Revised Statutes, requiring an executor or administrator to render an account of his proceedings, the same shall be served upon such executor or administrator by showing him the original, and at the same time delivering him a copy thereof, or in case of his absence from home, by leaving a copy thereof with his wife, or some suitable person at the place of his residence, thirty days at least before the time of hearing. But if such executor or administrator shall not reside within this state, the order shall be served by publishing it once in each week for three months before the return day thereof, in the state paper, and also in the county paper where the surrogate resides who issued the order, if any such paper there is published in said county, and if not, in the county paper of some adjoining county, unless the order be personally served on such executor or administrator, and if it shall be personally served on any such executor or administrator residing out of the state at the time of service, such service shall be made at least sixty days before the return day thereof.

CHAP. VI.
Commission may be
issued, &c.

§ 77. On any proceedings or matter in controversy before a surrogate, when the testimony of a witness in any other state or territory of the United States, or any foreign place, is required by any party to such proceedings or controversy, the surrogate may issue a commission to take such testimony, in the same manner as by law the same may be done in any court of record.

CHAP. 384.

AN ACT to amend an act concerning the proof of wills, executors and administrators, guardians and wards, and surrogates' court.

PASSED May 14, 1840.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 2. Where a will of personal estate duly executed in this state, by a person not a resident of this state, shall in the first instance have been duly admitted to probate in a court of a foreign state or country, letters testamentary or of administration with the will annexed, may be issued thereon by any surrogate having jurisdiction upon the production of a duly exemplified or authenticated copy of such will, under the seal of the court in which the same shall have been proved.

Letters of
adminis-
tration, &c.
may be
granted on
exemplifi-
cation of
will.

26 B., 254.

CHAP. 129.

AN ACT concerning the proofs of wills.

PASSED April 22, 1841.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. Sections eleven, twelve, thirteen, fourteen, fifteen and sixteen, of the act entitled "An act concerning the proof of wills, executors and administrators, guardians and wards, and surrogates' courts," passed May 16, 1837, shall apply to all witnesses, whom any person interested in the proof of a will, shall request to be examined, whether such witnesses be subscribing witnesses to such will or not; provided the surrogate, who has the power to take the proof of such will, is satisfied that the testimony of the witness so requested to be examined, is material.

Provision
as to wit-
nesses to be
examined.

§ 2. The provisions of the first section of this act shall apply to all cases of the proof of wills, whether the will be contested or not.

As to proof
of wills.

§ 3. No witness shall be examined under the provisions of this act, unless the party requesting such examination shall

Notice to be
given to
witnesses

PART II.
to be ex-
amined.

have previously given written notice of the time and place appointed for such examination, for such length of time as is required in cases of trials of issues of fact in the supreme court, to all the parties who appeared before the surrogate before whom the proceedings to take the proof of any such will are pending.

CHAP. 121.

AN ACT in relation to the office of surrogate.

PASSED April 13, 1843.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

First judge
may act as
surrogate
in certain
cases.

§ 1. Section forty-nine of article third, of title second, of chapter six, of part second of the Revised Statutes, is hereby amended so as to read as follows: "when any surrogate who would otherwise be authorized to act, shall be so precluded from acting, or shall be so precluded from acting by reason of any of the provisions of section second of title first of chapter third of part third of the Revised Statutes, upon a representation and due proof thereof, to the first judge of such county, such judge shall be vested with all the powers and authority of the surrogate, in relation to the proof of any such will, and the granting of letters testamentary or of administration thereon, and the granting of letters of administration in case of intestacy; and shall retain jurisdiction in such cases, for all the purposes contemplated by this chapter."

Extent of
the provi-
sions of
this act.

§ 2. The provisions of this act shall be applicable to all cases of the proof of wills and the granting of letters testamentary or of administration thereon, and the granting of letters of administration in case of intestacy in the first section of this act specified, whether arising before or after the passage of this act, but shall not be construed to apply to cases which have already been decided.

2 B. Ch., 387.

CHAP. 177.

AN ACT in relation to the surrogate of the county of Wyoming, and for other purposes.

PASSED April 18, 1843.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

[Sections 1, 2, 3 are local.]

Power of
surrogates
of new
counties.

§ 4. In all cases of the erection of a new county hereafter, the surrogate of such county may take the proof of wills, and

grant letters testamentary and of administration, in cases where the deceased at the time of his death, resided within the territory embraced within such county.

CHAP. 288.

AN ACT to amend an act entitled "An act concerning the proof of wills, executors and administrators, guardians and wards, and surrogates' courts," passed May 16, 1837.

PASSED May 13, 1846.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. Whenever an absent or non-resident executor or administrator shall have been duly cited to appear and account before the surrogate, in pursuance of the fifty-second section of title third of chapter six and part second of the Revised Statutes, and the citation shall have been duly served in the manner prescribed by law, and such executor or administrator shall, without showing reasonable cause, neglect or refuse to appear in pursuance of said citation, the surrogate issuing such citation may in his discretion thereupon make an order revoking the letters testamentary or letters of administration before granted to such executor or administrator, reciting therein the cause of such revocation; and shall grant letters testamentary or of administration of the goods, chattels and effects of the deceased unadministered, to the person entitled thereto (other than such executor, or administrator), in the same manner as original letters of administration or letters testamentary, with the like effect as is provided in the twentieth and twenty-first sections of title third, chapter six, part second of the Revised Statutes, where an executor or administrator has neglected or refused to return an inventory.

Letters testamentary or of administration, when to be revoked.

CHAP. 238.

AN ACT relative to disputed wills.

PASSED April 15, 1853.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. The validity of any actual or alleged devise or will of real estate may be determined by the supreme court in a proper action for that purpose, in like manner as the validity of any deed conveying or purporting to convey lands might be determined by such court; and thereupon any party may be enjoined from setting up or from impeaching such devise,

Determination of the validity of wills.

PART II.

Prosecution by heirs.

as justice may require. Issues of fact in such actions may be tried by jury or the court, as the nature of the case may require and the court shall direct.

§ 2. Any heir or heirs claiming lands, tenements or hereditaments by descent, from an ancestor who died holding and being in possession of the same (whether such heir or heirs be in possession or not), may prosecute for the partition thereof, notwithstanding any apparent devise by such ancestor and any possession held under the same devise, provided that such heir or heirs shall allege and establish in the same suit, action or proceeding that such apparent devise is void.

CHAP. 360.

AN ACT relating to wills.

PASSED April 13, 1860.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Person having relatives may not devise property by will, to benevolent or other societies beyond one-half.

§ 1. No person having a husband, wife, child or parent, shall, by his or her last will and testament, devise or bequeath to any benevolent, charitable, literary, scientific, religious or missionary society, association or corporation, in trust or otherwise, more than one-half part of his or her estate, after the payment of his or her debts (and such devise or bequest shall be valid to the extent of one-half, and no more).

§ 2. All laws and parts of laws inconsistent with this act are hereby repealed.

CHAP. 148.

AN ACT in relation to the office of public administrator in the city of New York.

PASSED April 16, 1829.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

[Section 1 temporary.]

Power of common council.

§ 2. It shall and may be lawful for the common council of the said city to give such directions, and to make such rules and regulations for the government of the said public administrator, as they may from time to time deem necessary and proper to carry into effect the provisions of said article; and it shall be his duty faithfully in all things to conform to the same.

CHAP. 264.

AN ACT in relation to sales of real estate by executors.

PASSED May 9, 1835.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. Sales of real estates made by executors in pursuance of an authority given by any last will heretofore made or hereafter to be made, unless otherwise directed in such will, may, except where the real estate is situated in the city and county of New York, be public or private, and on such terms as in the opinion of the executor shall be most advantageous to those interested therein. Such sales of real estate situated in the city and county of New York, shall be made after like notice and be conducted in the same manner as is prescribed in title four, chapter sixth of the second part of the Revised Statutes, in relation to sales by order of any surrogate.

Sales by executors.

§ 2. Section fifty-six of title four of said chapter sixth of the Revised Statutes is hereby repealed.

Section repealed.

CHAP. 149.

AN ACT in relation to suits brought by and against executors.

PASSED April 2, 1838.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. In actions brought by or against executors, it shall not be necessary to join those as parties to whom letters testamentary shall not have been issued and who have not qualified.

Parties to suit.

5 W., 313; 12 B., 21.

CHAP. 205.

AN ACT requiring surrogates to procure their bill of fees taxed.

PASSED April 18, 1843.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. The surrogates of the several counties in this state shall upon the written request of the person or persons liable to pay the same, procure their bills for fees and charges, taxed by the first judge of the county courts or by some other officer

Bills to be taxed.

PART II.

authorized to tax bills of costs in the supreme court, residing in the county with such surrogate; upon due service of a copy of such bill and notice of taxation on the executor, administrator or other person liable to pay the same, at least six days before such taxation, for which service the taxing officer shall be entitled to receive from the person or persons requiring the same to be taxed, fifty cents; the surrogate or any party interested conceiving himself aggrieved by such taxation, may appeal therefrom to the supreme court, according to the practice of said court in cases pending therein.

CHAP. 80.

AN ACT to authorize executors and administrators to compromise and compound debts due to their testators, or intestates.

PASSED April 17, 1847.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Debts may
be compro-
mised or
compound-
ed.

§ 1. Executors and administrators may be authorized by the surrogate, or the officer authorized to perform the duties of surrogate, in the county where their letters testamentary, or of administration were issued, on application, and good and sufficient cause shown therefor, and on such terms as said surrogate or officer shall approve, to compromise or compound any debt or claim, belonging to the estate of their testator or intestate.

21 N. Y., 184.

Saving
clause.

§ 2. Nothing in this act contained shall prevent any party interested in the final settlement of said estate, from showing, on the final settlement of the accounts of said executor or administrator, that such debt or claim was fraudulently, or negligently compromised or compounded.

CHAP. 82.

AN ACT for the protection of purchasers of real estate upon sales by order of surrogates.

PASSED March 23, 1850.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Surrogate's
sales decla-
red valid.

§ 1. Every sale heretofore made, or hereafter to be made, under any of the provisions of the fourth title of chapter six of the second part of the Revised Statutes, and of the acts amending the same or in addition thereto, shall be deemed and held to be as valid and effectual as if made by order of

a court having original general jurisdiction; and the title of any purchaser at any such sale made in good faith, shall not be impeached, or invalidated, by reason of any omission error, defect or irregularity in the proceedings before the surrogate, or by an allegation of want of jurisdiction on the part of such surrogate; except in the manner and for the causes that the same could be impeached or invalidated, in case such sale had been made pursuant to the order of a court of original general jurisdiction.

24 B., 129.

§ 2. No such sale under any of the provisions of the fourth title of chapter sixth of part second of the Revised Statutes, and of the acts amending the same, shall be invalidated, nor in anywise impeached for any omission or defect in any petition of any executor or administrator under the provisions of said title and acts amending the same, provided such petition shall substantially show that an inventory has been filed, and that there are debts, or is a debt, which the personal estate is insufficient to discharge, and that recourse is necessary to the real estate (or some of it) whereof the decedent died seised.

Sales not to be invalidated for omission and defects.

§ 3. Nor shall any such sale be invalidated, nor in anywise impeached, by reason that any such petition was or shall be presented by less than the whole number of executors or of administrators; nor by reason that after the filing of any such petition, any bond required by law has been or shall be given by less than the whole number of the executors or administrators petitioning; nor by reason that any further proceeding, notice, sale, deed or return has been or shall be had or made by less than the whole number of executors or administrators petitioning; nor by reason of any irregularity in any matter or proceeding after the presenting of any petition, and the giving notice of the order to show cause why the authority or direction applied for should not be granted, and before the order confirming such sale. Provided, that nothing in this act contained shall be construed to affect, in any manner, any suit or proceeding already commenced, for the recovery of any lands, or the proceeds thereof, sold under or by virtue of any order of a surrogate's court.

Nor for want of parties or bond.

Nor for any irregularity

Proviso.

16 N. Y., 185.

§ 4. This act shall not be construed as authorizing any surrogate, or officer performing the duties of the office of surrogate, to make any order for the sale of the real property of a deceased person, or to confirm any such sale, unless upon a due examination he shall be satisfied that the provisions of said title have been complied with as if this act had not been passed.

Declaratory

CHAP. 150.

AN ACT authorizing surrogates to invest surplus moneys arising from sale of real estate in certain cases.

PASSED April 4, 1850.

The People of the State of New York, represented in Senate and Assembly, do enact as follows :

Surplus
moneys
belonging
to minors
to be in-
vested.

§ 1. Whenever any portion of the surplus moneys brought in to the surrogate's office, as the proceeds of the sale of real estate, shall belong to a minor, or belong to any person who has a temporary interest in the said money, and the reversionary interest belongs to another person, the surrogate's court shall make such order for the investment thereof, and for the payment of the interest and of the principal thereof, as the supreme court is authorized or required by law to make in analogous cases.

Money how
invested.

§ 2. The investments that shall be made by virtue of this act, shall be secured by mortgage upon unincumbered real estate within this state, which shall be worth at least double the amount of such investment exclusive of buildings thereon, in the name of office of the surrogate, and he shall keep the securities as he now is required by law to keep other securities belonging to his office, and the interest and principal shall be distributed by and under the direction of the surrogate, in conformity to the order under which the investment shall be made, and to the person or persons entitled thereto.

CHAP. 162.

AN ACT in relation to the mortgage, lease or sale of real estate pursuant to a surrogate's order.

PASSED April 6, 1850.

The People of the State of New York, represented in Senate and Assembly, do enact as follows :

The death,
removal or
disqualifi-
cation of
persons
named in
surrogate's
order not to
prevent its
execution.

§ 1. Whenever an order has been or shall be made by a surrogate for the mortgage, lease, or sale of the real estate of any deceased person, and the executor or administrator or other person named therein, shall die or be removed, or shall be otherwise disqualified from executing the same, while the same order remains unexecuted in whole or in part, the proceedings in relation thereto, shall be in nowise affected by such death, removal, or disqualification ; and it shall be lawful for the surrogate of the county by whom said order was made, to authorize the administrator to whom letters of administration shall have been issued on the goods, chattels, and credits

unadministrated of said deceased, with the will annexed or otherwise, or a disinterested freeholder, as in the case of an original order, to execute said order in the same manner and with the like effect as if the said order had been executed by the executor, administrator, or other person originally named therein: Provided that the administrator or other person so to be authorized, shall, before receiving such authority, give the like security, as would be required on the granting of an original order for the mortgage, lease or sale of any real estate.

CHAP. 175.

AN ACT to provide for the election of a separate officer to perform the duties of the office of surrogate in certain counties, and to increase his powers and duties.

PASSED April 15, 1851; "three-fifths being present."

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. The thirteenth section of the act entitled "An act to provide for the election of certain judicial and other officers, and to fix their term of office," passed May twelfth, eighteen hundred and forty-seven, is hereby amended so that it shall read as follows:

§ 13. Whenever the office of county judge shall be vacant in a county having a population exceeding forty thousand, or the term of office of such judge shall be about to expire, the board of supervisors of that county, if there be a separate officer to perform the duties of the office of surrogate in said county, may resolve that there shall be no such separate officer in said county, and thereupon the office of such separate officer shall be deemed vacant and abolished from the time that the term of office of said separate officer shall expire; or if there be no such separate officer, said board may resolve that there shall be such separate officer in such county, in which case such separate officer shall be elected at the time, and in the manner in all respects, and for the same term that the county judge in said county shall be elected; and the said county board may at the same time alter the salary of the county judge and fix the salary of such separate officer, but no alteration of the salary of a county judge shall be made to take effect during the continuance of his term of office. Every person elected pursuant to this act, or the act hereby amended, shall have power to take affidavits, and the proof and acknowledgment of deeds and other instruments in writing, with the same force and effect as if taken by a county judge, and for which he may charge the same fees.

Separate
officer to
perform
duties of
surrogate.

§ 2. Every resolution providing for the election of or dispensing with such separate officer shall be immediately deli-

Resolution
to be filed
in county

PART II.
clerk's
office.

vered by the clerk of the board of supervisors to the county clerk, whose duty it shall be to file the same in his office, and keep the same as a part of the records of such county, and within ten days after such resolution shall be filed in the office of any such county clerk, he shall transmit to the secretary of state to be filed and kept in his office, a copy of such resolution duly certified by him.

Bonds with
whom to be
filed.

§ 3. All bonds given by any executor or administrator, or any other person, which by law are required to be filed with the surrogate or in the surrogate's office of any county, shall be proved or acknowledged by the parties executing the same as deeds are now required by law to be proved or acknowledged, before the same shall be received by the surrogate or person performing the duties of surrogate.

CHAPTER VIII.

Domestic Relations.

CHAP. 275.

AN ACT in relation to powers of attorney executed by married women for the conveyance of real estate.

PASSED May 11, 1885.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

How to be
proved or
acknow-
ledged.

§ 1. When any married woman residing out of this state shall have joined, or shall join with her husband in executing any power of attorney for the conveyance of real estate situated in this state, the conveyance executed in virtue of such power shall have the same force and effect as if executed by such married woman in her own proper person: provided that the execution of such power of attorney by such married woman shall first have been duly proved or acknowledged, according to the provisions of the Revised Statutes in relation to conveyances executed by married women residing out of this state.

CHAP. 80.

AN ACT in respect to insurances for lives for the benefit of married women.

PASSED April 1, 1840.

The People of the State of New York represented in Senate and Assembly, do enact as follows:

May insure
life of
husband.

§ 1. It shall be lawful for any married woman, by herself, and in her name, or in the name of any third person, with his

assent, as her trustee, to cause to be insured, for her sole use, the life of her husband for any definite period, or for the term of his natural life; and in case of her surviving her husband, the sum or net amount of the insurance becoming due and payable, by the terms of the insurance, shall be payable to her, to and for her own use, free from the claims of the representatives of her husband, or of any of his creditors; but such exemption shall not apply where the amount of premium annually paid shall exceed three hundred dollars.

1 B. Ch., 268; 3 Brad., 139.

§ 2. In case of the death of the wife, before the decease of her husband, the amount of the insurance may be made payable after her death to her children for their use, and to their guardian, if under age.

When payable to children.

CHAP. 177.

AN ACT for the better securing the interests of married women in lands sold under judgment or decree in partition.

PASSED April 28, 1840.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. In all cases of sales under judgment or decree in partition, where it shall appear that any married woman has an inchoate right of dower in any of the lands divided or sold, or that any person has any vested or contingent future right or estate in such lands, it shall be the duty of the court, under whose judgment or decree such sale is made, to ascertain and settle the proportional value of such inchoate, contingent or vested right or estate, according to the principles of law applicable to annuities and survivorships, and to direct such proportion of the proceeds of the sale to be invested, secured or paid over in such manner as shall be judged best to secure and protect the rights and interests of the parties.

Shares of married women how to be invested.

§ 2. Any married woman may release such right, interest or estate to her husband, and acknowledge the same before the master or one of the commissioners making the sale, separate and apart from her husband, in the manner required by law in respect to the acknowledgment of deeds by married women. Upon such release, the share of the proceeds of the sale arising from her contingent interest, shall be paid to her husband.

Right how to be released.

§ 3. Such release, and also the payment, investment or otherwise securing any share of the proceeds of a sale according to the first section of this act, shall be a bar both in law and equity against any such right, estate, or claim.

Effect of such release

CHAP. 379.

AN ACT in addition to the act passed April 28, 1840, entitled "An act for the better securing the interests of married women in lands sold under judgment or decree in partition."

PASSED May 14, 1840.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. The act for the better securing the interest of married women, in lands sold under judgment or decree in partition passed, April 28, 1840, is hereby amended by adding the following section:

Officers
before
whom
release
may be
acknow-
ledged.

Any release that may be executed by a married woman, in pursuance of the second section of this act, may be also acknowledged before any master in chancery, or any officer authorized to take acknowledgments of deeds, or if executed out of this state, before any officer residing in the state, district or county, where such acknowledgment is made, who is authorized to take the acknowledgment of deeds, to be recorded in this state.

CHAP. 257.

AN ACT in addition to the provisions of the Revised Statutes in relation to divorces.

PASSED May 26, 1841.

The People of the State of New York, represented in Senate and Assembly do enact as follows:

May declare
certain
marriages
void.

§ 1. The chancellor or any vice-chancellor may upon application of the wife, by a sentence of nullity, declare void any marriage contract, heretofore or hereafter made, upon evidence of the following facts:

1. That the female was at the time of the alleged marriage under the age of fourteen years, and that such marriage was without the consent of her father, mother, guardian or other person having the legal charge of her person, and was an offence on the part of the husband, under the statute, and punishable according to law.

2. That the marriage was not followed by consummation or cohabitation, nor had been ratified by any mutual assent of the parties after the female had attained the age of fourteen years.

CHAP. 11.

AN ACT in relation to Patent Rights.

PASSED February 20, 1845.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. Every married woman, being a resident of this State, who shall receive a patent for her own invention, pursuant to the laws of the United States, may hold and enjoy the same, and all the proceeds, benefits and profits thereof, and of such invention, to her own separate use, free and independent of her husband and his creditors; and may transfer and dispose thereof, and in every respect perform all acts in relation thereto, in the same manner as if she were unmarried; but this act shall not authorize such married woman to contract any pecuniary obligations to be discharged at any future time.

Rights of married women.

CHAP. 200.

AN ACT for the more effectual protection of the property of married women.

PASSED April 7, 1848.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. The real and personal property of any female who may hereafter marry, and which she shall own at the time of marriage, and the rents, issues and profits thereof shall not be subject to the disposal of her husband, nor be liable for his debts, and shall continue her sole and separate property, as if she were a single female.

Property of females to be married, secured.

24 N. Y., 372; 23 N. Y., 259; 22 N. Y., 15, 111, 451; 18 N. Y., 268; 12 N. Y., 208; 31 B., 316, 372, 532; 29 B., 382, 514, 646; 28 B., 343, 625; 24 B., 411, 581; 22 B., 371; 21 B., 289, 546, 552, 561; 18 B., 159, 562, 565; 17 B., 157, 560; 16 B., 144, 556; 15 B., 446, 555; 14 B., 247, 531; 12 B., 655; 10 B., 598; 9 B., 366; 4 B., 298; 3 B., 622; 2 Hilt., 431, 482; 1 Hilt., 476; 3 E. D. S., 310; 3 Bos., 334; 2 S. S. C., 415.

§ 2. The real and personal property, and the rents, issues and profits thereof of any female now married shall not be subject to the disposal of her husband; but shall be her sole and separate property as if she were a single female except so far as the same may be liable for the debts of her husband heretofore contracted.

Property of females now married, secured.

§ 3. Any married female may take by inheritance or by gift, grant, devise or bequest from any person other than her husband, and hold to her sole and separate use, and convey and devise real and personal property and any interest or estate

May take by gift, grant or devise.

PART II.

therein, and the rents, issues and profits thereof, in the same manner and with like effect as if she were unmarried, and the same shall not be subject to the disposal of her husband nor be liable for his debts.

As amended by Laws of 1849, ch. 375.

CHAP. 375.

AN ACT to amend an act entitled "An act for the more effectual protection of the property of married women," passed April 7, 1848.

PASSED April 11, 1849.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

When
trusts may
be annulled

§ 2. Any person who may hold or who may hereafter hold, as trustee for any married woman, any real or personal estate or other property under any deed of conveyance or otherwise, on the written request of such married woman, accompanied by a certificate of a justice of the supreme court that he has examined the condition and situation of the property and made due inquiry into the capacity of such married woman to manage and control the same, may convey to such married woman by deed or otherwise, all or any portion of such property, or the rents, issues or profits thereof, for her sole and separate use and benefit.

31 B., 133, 316, 372, 532.

Marriage
contracts.

§ 3. All contracts made between persons in contemplation of marriage shall remain in full force after such marriage takes effect.

18 N. Y., 258; 12 N. Y., 425; 32 B., 251; 2 Hilt., 431, 482; 1 Hilt., 476;
3 E. D. S., 300; 3 Bos., 334.

CHAP. 576.

AN ACT relating to debts contracted by women before marriage.

PASSED July 18, 1853.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Actions,
how main-
tained.

§ 1. An action may be maintained against the husband and wife, jointly, for any debt of the wife contracted before marriage, but the execution on any judgment in such action shall issue against, and such judgment shall bind the separate estate and property of the wife only, and not that of the husband.

21 B., 290.

CHAP. VIII.
Husband
liable in
certain
cases.

§ 2. Any husband who may hereafter acquire the separate property of his wife, or any portion thereof by any ante-nuptial contract, or otherwise, shall be liable for the debts of his wife contracted before marriage, to the extent only of the property so acquired, as if this act had not been passed.

CHAP. 187.

AN ACT to amend an act entitled "An act for the benefit of married women in insuring the lives of their husbands."

PASSED April 14, 1858.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. It shall be lawful for any married woman, by herself, and in her name, or in the name of any third person, with his assent as her trustee, to cause to be insured, for her sole use, the life of her husband for any definite period, or for the term of his natural life; and in case of her surviving her husband, the sum or net amount of the insurance becoming due and payable by the terms of the insurance, shall be payable to her, to and for her own use, free from the claims of the representatives of the husband, or of any of his creditors; but such exemption shall not apply where the amount of premium annually paid out of the funds or property of the husband shall exceed three hundred dollars.

Wife may
insure life
of husband.

§ 2. The amount of the insurance may be made payable in case of the death of the wife before the decease of her husband, to his or to her children for their use, as shall be provided in the policy of insurance and to their guardian, if under age.

When pay-
able to
children.

As amended by Laws of 1862, ch. 70.

CHAP. 90.

AN ACT concerning the rights and liabilities of husband and wife.

PASSED March 20, 1860.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. The property, both real and personal, which any married woman now owns, as her sole and separate property; that which comes to her by descent, devise, bequest, gift or grant; that which she acquires by her trade, business, labor or services, carried on or performed on her sole or separate account; that which a woman married in this state owns at the time of her marriage, and the rents, issues and proceeds

Married
woman may
hold pro-
perty, col-
lect rents,
&c.

PART II.

of all such property, shall, notwithstanding her marriage, be and remain her sole and separate property, and may be used, collected and invested by her in her own name, and shall not be subject to the interference or control of her husband, or liable for his debts; except such debts as may have been contracted for the support of herself or her children, by her as his agent.

A married woman may bargain, sell and transfer her separate property.

§ 2. A married woman may bargain, sell, assign and transfer her separate personal property, and carry on any trade or business, and perform any labor or services on her sole and separate account, and the earnings of any married woman; from her trade, business, labor or services, shall be her sole and separate property, and may be used or invested by her in her own name.

May bargain, sell and convey real and personal property.

§ 3. Any married woman possessed of real estate as her separate property, may bargain, sell and convey such property and enter into any contract in reference to the same, with the like effect in all respects as if she were unmarried, and she may in like manner enter into any such covenant or covenants for title as are usual in conveyances of real estate, which covenants shall be obligatory to bind her separate property, in case the same or any of them be broken.

As amended by Laws of 1862, ch. 172.

[Sections 4, 5 and 6 repealed by same act.]

May sue and be sued also bring actions for injuries to her person or character in her own name.

§ 7. Any married woman may, while married, sue and be sued in all matters having relation to her sole and separate property, or which may hereafter come to her by descent, devise, bequest, purchase, or the gift or grant of any person in the same manner as if she were sole; and any married woman may bring and maintain an action in her own name, for damages, against any person or body corporate, for any injury to her person or character, the same as if she were sole; and the money received upon the settlement of any such action or recovered upon a judgment, shall be her sole and separate property. In case it shall be necessary in the prosecution or defence of any action brought by or against a married woman, to enter into any bond or undertaking, such bond or undertaking may be executed by such married woman with the same effect in all respects as if she were sole, and in case the said bond or undertaking shall become broken or forfeited the same may be enforced against her separate estate.

As amended by Laws of 1862, ch. 172.

Her bargain not to bind husband.

§ 8. No bargain or contract made by any married woman, in respect to her sole and separate property, or any property, which may hereafter come to her by descent, devise, bequest, purchase, or the gift or grant of any person (except her husband), and no bargain or contract entered into by any married woman in or about the carrying on of any trade or business, under any statute of this state, shall be binding upon her

husband, or render him or his property in any way liable therefor.

As amended by Laws of 1862, ch. 172.
[Sections 9, 10 and 11 repealed by same act.]

CHAP. 172.

AN ACT to amend the act entitled "An act concerning the rights and liabilities of husband and wife," passed March twentieth, eighteen hundred and sixty.

PASSED April 10, 1862; three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

[Sections 1, 2, 3, 4 amend Laws of 1860, ch. 90.]

§ 5. In an action brought or defended by any married woman in her name, her husband shall not, neither shall his property be liable for the costs thereof, or the recovery therein. In an action brought by her for an injury to her person, character, or property, if judgment shall pass against her for costs, the court in which the action is pending shall have jurisdiction to enforce payment of such judgment out of her separate estate, though the sum recovered be less than one hundred dollars.

Husband's property not liable for costs.

§ 6. No man shall bind his child to apprenticeship or service or part with the control of such child or create any testamentary guardian therefor, unless the mother if living, shall in writing signify her assent thereto.

Mother to give consent to apprenticing child.

§ 7. A married woman may be sued in any of the courts in this state, and whenever a judgment shall be recovered against a married woman the same may be enforced by execution against her sole and separate estate in the same manner as if she were sole.

Judgment to be enforced against her separate estate.

CHAP. 266.

AN ACT relative to the payment of wages to minors.

PASSED April 10, 1850.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. It shall be necessary for the parents or guardians of such minor children, as may be in service, to notify the party employing such minor, within thirty days after the commencement of such service; that said parent or guardian claim the wages of such minor, and in default of such notice payment to such minor shall be valid.

Notice of claim to be given or payment to minor valid

PART II.

CHAP. 88.

AN ACT relative to proceedings upon writs of homine replegiando.

PASSED April 8, 1834.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Fugitives
in custody
to be sup-
ported.

§ 1. The person claiming the services of a fugitive from service, or his agent, shall pay weekly for the support of such fugitive the sum of two dollars per week, so long as said fugitive shall remain in custody, by virtue of the provisions of article first, title first, chapter ninth, part third of the Revised Statutes, and in default of such payment, such fugitive shall be discharged from custody, upon his own recognizance, by a judge of the court of common pleas or supreme court commissioner, upon application to be made at chambers.

Person
claiming
fugitive
may be held
to bail.

§ 2. The person claiming any fugitive from service, or his agent, after a writ of homine replegiando has been issued, may be held to bail by an order of a judge of the court out of which such writ of homine replegiando issued, in such sum as said court shall order, not less than two hundred and fifty dollars, conditioned for the payment of all damages which may be sustained by such person, claimed to be a fugitive from service, in case it shall not be established that he is such fugitive.

CHAP. 225.

AN ACT to extend the right of trial by jury.

PASSED May 6, 1840.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Identity of
alleged
fugitive to
be deter-
mined by
jury.

§ 1. Instead of the hearing provided by the first article of title one and chapter nine of the third part of the Revised Statutes, to be had before a court or officer, upon the return of any writ of habeas corpus issued to bring up the body of an alleged fugitive from service or labor to which he is held under the laws of any other state, who shall have escaped into this state, the claim to the service of such alleged fugitive, his identity, and the fact of his having escaped from another state of the United States into this state, shall be determined by a jury.

Jury how
to be drawn
in certain
cases.

§ 2. If such writ be returnable to a court, to which a jury shall be returned and in attendance, then a jury to try the matters aforesaid shall be drawn in the same manner as for the trial of civil causes, from the jurors summoned, and

attending such court; and the said matters shall be tried, and determined like any issue of fact in such court.

§ 3. If such writ shall be returnable to a court to which there shall not be any jury returned, or to a single officer, then such court or officer shall nominate eighteen reputable citizens of the county, qualified to serve as jurors in the courts of record; and shall issue a summons to the sheriff, or any constable of the county, commanding him to cause the persons so nominated to appear before such court or officer, at a time and place to be specified in the summons; which time shall be fixed by such court or officer, in reference to the readiness of the parties to enter upon the trial of the said matters.

In other cases jury to be summoned.

§ 4. At the time and place so appointed, or at the time and place to which such hearing shall have been adjourned, twelve of the persons so summoned and appearing, shall be balloted for and drawn in the like manner as jurors in the court of record, and shall be sworn by such court or officer, well and truly to hear, try and determine the matters for the trial of which such jury shall have been summoned. If by reason of any default in the appearance of any of the persons so nominated, or in consequence of any such persons being set aside after appearance, there shall not be twelve to form a jury, such court or officer, shall nominate as many other citizens of the county, qualified to serve as jurors, as may be necessary, who shall be summoned, and the deficient number shall be balloted for, drawn and sworn, as herein before provided.

And drawn.

§ 5. Any jury drawn and sworn as herein provided, shall hear the allegations and proofs of the parties, and shall determine the matters submitted to them, and for that purpose shall be kept together by some proper officer, who shall be sworn as is usual in like cases in courts of record. The verdict rendered by such jury, if it be in a court of record, shall be recorded in its minutes, and if it be rendered on a hearing before a single officer, shall be certified by him and filed in the office of the clerk of the county, as a public record.

Verdict of jury.

§ 6. If such jury cannot agree after having been kept together a reasonable time, they shall be discharged, and another shall be summoned, impaneled and sworn as herein before provided, and new juries shall continue to be summoned until one shall agree. And the finding of any jury as aforesaid, shall be conclusive upon all the matters submitted to them, and shall not be vacated or set aside, except by the supreme court, which is hereby authorized to set the same aside for the same causes, in the same manner and with the like effect, as verdicts are set aside by the court in criminal cases and for no other cause.

New juries.

Verdict conclusive when may be set aside

§ 7. If the finding of the jury be in favor of the claimant upon all the matters submitted, the court or officer before whom such hearing shall have been had, shall grant to such

Certificate to be given to claimant.

PART II.

claimant a certificate stating that it having been found by a jury that such fugitive, (who shall be particularly described in such certificate), doth owe service or labor to the person claiming the same under the laws of some other state in the Union; (naming such person and the state under whose laws such claim is sustained), and that such fugitive escaped from such state into this state, and thereby allowing such person or his agent, (who shall also be named in such certificate), to take such fugitive and convey him to the state from which he fled; which certificate shall authorize the person receiving the same, to remove the fugitive therein named, without any unnecessary delay, through and out of this state, on the direct route to the state from which he fled.

When alleged fugitive to be liberated.

Not to be retaken or removed, penalty.

§ 8. If the finding of the jury be against the claimant, on any of the matters submitted to them, the person so claimed as a fugitive shall be forthwith set at liberty, and shall never thereafter be molested upon the same claim; and any person who shall thereafter arrest, detain or proceed in any manner to retake such alleged fugitive upon the same claim, or shall by virtue of the same claim remove such alleged fugitive out of this state under any process or proceeding whatever, shall be deemed guilty of kidnapping, and upon conviction shall be punished by imprisonment in the state prison not exceeding ten years.

Duty of district attorney.

§ 9. The district attorney of the county in which any alleged fugitive from service or labor from another state, shall be proceeded against by any person claiming such fugitive, shall, upon notice of such proceeding, render his advice and professional services to such alleged fugitive, and shall attend in his behalf on the trial of such claim, and shall receive such compensation therefor, as shall be certified to be just and reasonable by the court or officer before whom the proceedings shall be conducted; to be paid as part of the contingent expenses of the county. And in case of the omission of such district attorney so to attend or render his professional services, the court or officer before whom the proceedings shall be had, shall assign some counsellor of the supreme court, in good standing, to conduct the defence of such alleged fugitive, and render to him the usual services of a counsel; for which he shall receive a compensation to be certified and paid as herein before provided in respect to the district attorney.

When other counsel to be employed.

Subpoenas for witnesses.

Fees for serving.

§ 10. Every person so claimed as a fugitive shall be entitled to subpoenas, for his witnesses, from the court or officer before whom the habeas corpus may be returnable, without any fee or charge therefor; and every constable, sheriff or marshal, to whom any such subpoena shall be delivered to be served shall serve the same, and shall be allowed the same fees as for serving a capias in a court of common pleas, to be paid as part of the contingent expenses of the county, in the event of a jury summoned under this act determining in favor of the claimant; and every witness served with such subpoena shall

be bound to attend and testify, in the same manner as in criminal cases, without being entitled to any fees whatever.

§ 11. The provisions of the fourteenth, fifteenth, seventeenth and eighteenth sections of the seventh article, and first title of chapter five, and part second of the Revised Statutes, relating to the enforcing of subpoenas for witnesses, the compelling them to testify, the penalty upon persons summoned as jurors for non-attendance, the fees of the sheriff or constable for summoning a jury, and the fees of jurors, shall be deemed applicable to the proceedings under this act; except that the penalty upon persons summoned as jurors, for not attending, shall be sued for, and collected by the district attorney of the county, for its use; and the fees of the sheriff or constable for summoning the jury, and of the jurors and of the officer hearing and trying any such claim, shall be paid by the claimant in all cases.

Attendance of jurors, how enforced; their fees.

Fees of sheriff, &c.

§ 12. No person shall be entitled to a writ of habeas corpus to arrest a fugitive from labor or service, until he shall have delivered to the court or officer to whom application for such writ shall be made, a bond to the people of this state in the penal sum of one thousand dollars, with two sufficient sureties, inhabitants and freeholders of this state, to be approved by such court or officer, conditioned to pay all costs and expenses that may accrue in the prosecution of the said writ, legally chargeable to such claimant, and also to pay weekly the sum of two dollars to the person having such alleged fugitive in his custody, for the support of such alleged fugitive so long as he shall remain in custody under such writ of habeas corpus, or be detained by the proceedings thereon; and also that if any jury impaneled under this act shall render a verdict against such claim, then, that such claimant shall pay all the costs and expenses of the proceedings, including those to which such alleged fugitive shall have been subjected; and in addition thereto, shall pay to such alleged fugitive the sum of one hundred dollars and all damages which he may sustain. The said bond shall be filed in the office of the clerk of the county, and may be prosecuted by any person claiming any benefit from its provisions, in the name of the people of this state, but the people shall not be liable for any costs in such suit.

Bond to be given previous to habeas corpus to arrest an alleged fugitive.

§ 13. The fifteenth, sixteenth and seventeenth sections of the first Title of Chapter nine and Part third of the Revised Statutes are hereby repealed; but this repeal shall not affect any process, suit or proceeding already instituted, or any penalty already incurred. And the ninth section of the said title shall be deemed applicable to the hearing provided by this act.

Certain sections repealed.

§ 14. If the jury be summoned to appear before a single officer, as provided by this act, such officer shall administer the usual oath to the witnesses, and preside on the trial as is

Officers to preside when jury summoned.

PART II.

Commission to examine witnesses abroad.

usual for judges to preside, in a court of record, in criminal cases.

§ 15. The court or officer before whom any trial shall be had, or any writ of habeas corpus shall be made returnable pursuant to the provisions of this act, is hereby authorized, on the application of the alleged fugitive slave, to grant a commission for the examination of witnesses residing out of this state, in the same manner and with the like effect as is provided in Article second of Title third of Chapter seven of Part third of the Revised Statutes, and for that purpose such court or officer shall adjourn the hearing from time to time as may be necessary.

Officers of this state not to issue process for removal of fugitive, otherwise than as provided by this act. Penalty.

§ 16. No judge or other officer of this state shall grant or issue any certificate or other process, for the removal from this state of any fugitive or of any person claimed as a fugitive from service or labor, otherwise than in pursuance of the provisions of this act; and every such judge or other officer who shall grant or issue any such certificate or other process, except in the manner prescribed in and by this act, shall be deemed guilty of a misdemeanor, and liable to punishment therefor.

Punishment for removing alleged fugitives without authority of law.

§ 17. Every person who shall, without the authority of law, forcibly remove or attempt to remove from this state any fugitive from service or labor, or any person who is claimed as such fugitive, shall forfeit the sum of five hundred dollars to the party aggrieved, and shall be deemed guilty of the crime of kidnapping, and upon conviction of such offence, shall be punished by imprisonment in the state prison for a period not exceeding ten years.

Act not to apply to apprentices.

§ 18. This act shall not be so construed as to apply to the relation of master and apprentice, which may exist in any other state.

CHAP. 375.

AN ACT more effectually to protect the free citizens of this state from being kidnapped or reduced to slavery.

PASSED May 14, 1840.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Governor to cause persons kidnapped or transported, &c. to be restored.

§ 1. Whenever the governor of this state shall receive information satisfactory to him, that any free citizen or any inhabitant of this state, has been kidnapped and transported away out of this state, into any other state or territory of the United States, for the purpose of being there held in slavery; or that such free citizen or inhabitant is wrongfully seized, imprisoned or held in slavery in any of the states or territories of the United States, on the allegation or pretence that

such person is a slave, or by color of any usage or rule of law prevailing in such state or territory, is deemed or taken to be a slave, or not entitled of right to the personal liberty belonging to a citizen; it shall be the duty of the said governor to take such measures as he shall deem necessary to procure such person to be restored to his liberty and returned to this state. The governor is hereby authorized to appoint and employ such agent or agents as he shall deem necessary to effect the restoration and return of such person; and shall furnish the said agent with such credentials and instructions as will be likely to accomplish the object of his appointment. The governor may determine the compensation to be allowed to such agent for his services besides his necessary expenses.

§ 2. Such agent shall proceed to collect the proper proof to establish the right of such person to his freedom, and shall perform such journeys, take such measures, institute and procure to be prosecuted, such legal proceedings, under the direction of the governor, as shall be necessary to procure such person to be restored to his liberty and returned to this state. Duty of agent.

§ 3. The accounts for all services and expenses incurred in carrying this act into effect shall be audited by the comptroller, and paid by the treasurer on his warrant, out of any moneys in the treasury of this state not otherwise appropriated. The treasurer may advance, on the warrant of the comptroller, to such agent, such sum or sums as the governor shall certify to be reasonable advances to enable him to accomplish the purposes of his appointment, for which advance such agent shall account, on the final audit of his warrant. Expense.

CHAPTER IX.

Unclaimed Freight and Baggage.

CHAP. 300.

AN ACT relative to unclaimed trunks and baggage.

PASSED May 2, 1837.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. The proprietor or proprietors of the several lines of stages, and the proprietors of the several canal boat lines, and the proprietors of the several steamboats, and the several incorporated railroad companies, and the keepers of the several inns and taverns within this state, who shall have any un- Description to be entered in a book.

PART II.

claimed trunks, boxes or baggage within his, their, or either of their custody, shall immediately enter the time the same was left, with a proper description thereof, in a book to be by them provided and kept for that purpose. In case the name and residence of the owner shall be ascertained, it shall be the duty of such person who shall have any such property as above specified, to immediately notify the owner thereof by mail.

Description
of property
to be made
and pub-
lished.

§ 2. In case there shall not be any information obtained as to the owner, it shall be the duty of the person having the possession thereof, to make out a correct written description of all such property as shall have been unclaimed for thirty days, stating the time the same came into his possession, and forward said description to the editor of the state paper, whose duty it shall be, on the first Mondays of July, October, January and April in each year, to publish the same in the state paper once a week for three weeks successively.

If not
claimed for
60 days to
be opened
and inven-
tory to be
made.

§ 3. In case the said property shall remain unclaimed for sixty days after the said publication, it shall be the duty of the person or company having possession thereof, to apply to a magistrate of the town or city in which said property is retained, in whose presence and under whose direction said property shall be opened and examined, and an inventory thereof taken by said magistrate; and if the name and residence of the owner is ascertained by such examination, it shall be the duty of the magistrate forthwith to direct a notice thereof to such owner, by mail: and if said property shall remain unclaimed for three months after such examination, it shall be the further duty of the person or company having possession thereof to apply to a magistrate as aforesaid; and if said magistrate shall deem such property of sufficient value, he shall cause the same to be sold at public auction, giving six days' previous notice of the time and place of such sale; and from the proceeds of such sale he shall pay the charges and expenses legally incurred in respect to said property, or a ratable proportion thereof to each claimant, if insufficient for the payment of the whole amount: and the balance of the proceeds of such sale, if any, the said magistrate shall immediately pay to the overseers of the poor of said town or city, for the use of the poor thereof; and the said overseers shall make an entry of such amount, and the time of receiving the same, upon their official records, and it shall be subject, at any time within seven years thereafter, to be reclaimed by, and refunded to, the owner of such property, his heirs or assigns, on satisfactory proof of such ownership.

When to be
sold at
auction.

Expense to
be a lien on
property.

§ 4. The person making the entry of unclaimed property as above specified, shall be entitled to twelve and a half cents for each trunk, box, bale, package or bundle so entered, and shall have a lien on the property so entered, until payment shall be made; and in case any additional expense shall be

incurred for printing, the lien shall continue until payment shall be made for such additional expense.

§ 5. In case any person shall neglect or refuse to comply with the provisions of this act, he shall forfeit the sum of five dollars for each and every trunk, box or bundle of baggage so neglected as above specified, to the benefit of any person who shall sue for the same, in his own name, in an action of debt in any court having cognizance thereof. Penalty.

CHAP. 523.

AN ACT in regard to unclaimed express freight.

PASSED April 14, 1855.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. Every express company, or person or persons, engaged in the express business, who shall have had any unclaimed article, goods, or things, not perishable, in its, his, or their possession, for a period of one year at least, may proceed to sell the same at public auction, and out of the proceeds may retain the charges of transportation and storage of such article, goods or thing, and the expenses of advertising and sale thereof; but no such sale shall be made, until the expiration of four weeks from the first publication of notice of such sale, in a newspaper published at or nearest the place at which such article, goods, or thing, was directed to be left, and also at the place where such sale is to take place; and said notice shall contain a description of such article, goods, or thing, the place at which the same was to be left, as near as may be, together with the name of the person to whom directed, if known; and the expenses incurred for advertising shall be a lien upon such article, goods, or thing, in a ratable proportion, according to the value of each article, package or parcel, if more than one. Express companies may sell unclaimed articles.

§ 2. In case such unclaimed article, goods, or thing, shall in its nature be perishable, the same may be sold as soon as it can be, on giving the notice required in the preceding section, after its receipt at the city, town, or village, to which it was directed. In case of perishable articles.

§ 3. Such express company, or person or persons engaged in the express business, shall make an entry of the balance of the proceeds of the sale, if any, of each article, goods or thing directed to the same person, as near as can be ascertained, and at any time within five years thereafter, shall refund any surplus so retained to the owner of such article, goods, or thing, his heirs or assigns, on satisfactory proof of such ownership. Must keep an account and refund the owner.

§ 4. In case such balance shall not be claimed by the rightful owner within five years after the sale as above specified, Or pay to county treasurer.

PART II.

then it shall be paid to the county treasurer, for the use of the county poor of said county.

CHAPTER X.

Damages for Causing Death.

CHAP. 450.

AN ACT requiring compensation for causing death by wrongful act, neglect, or default.

PASSED December 13, 1847.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Actions for
damages
may be
maintained

§ 1. Whenever the death of a person shall be caused by wrongful act, neglect or default, and the act, neglect or default, is such as would (if death had not ensued) have entitled the party injured to maintain an action and recover damages, in respect thereof, then and in every such case, the person who, or the corporation which would have been liable, if death had not ensued, shall be liable to an action for damages, notwithstanding the death of the person injured, and although the death shall have been caused under such circumstances as amount in law to felony.

24 N. Y., 181, 196, 471; 23 N. Y., 466; 15 N. Y., 434; 14 N. Y., 314; 32 B., 25, 145; 31 B., 261; 30 B., 101, 437; 29 B., 237, 603; 28 B., 14, 42; 27 B., 244, 248; 26 B., 618; 25 B., 218; 21 B., 245, 508, 513; 16 B., 54, 315; 15 B., 575; 14 B., 588; 3 Bos., 67; 3 E. D. S., 103.

By whom
brought.

§ 2. Every such action shall be brought by and in the names of the personal representatives of such deceased person, and the amount recovered in every such action shall be for the exclusive benefit of the widow and next of kin of such deceased person, and shall be distributed to such widow and next of kin in the proportions provided by law in relation to the distribution of personal property, left by persons dying intestate; and in every such action the jury may give such damages as they shall deem fair and just, with reference to the pecuniary injury resulting from such death to the wife and next of kin of such deceased person: provided that every such action shall be commenced within two years after the death of such deceased person.

Amended, see Laws of 1849, ch. 256.

CHAP. 256.

AN ACT to amend "An act requiring compensation for causing death by wrongful act, neglect or default," passed December 13, 1847..

PASSED April 7, 1849.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. The second section of the act entitled "An act requiring compensation for causing death by wrongful act, neglect or default," is hereby amended so as to read as follows: Every such action shall be brought by and in the names of the personal representatives of such deceased person, and the amount recovered in every such action shall be for the exclusive benefit of the widow and next of kin of such deceased person, and shall be distributed to such widow and next of kin in the proportion provided by law in relation to the distribution of personal property left by persons dying intestate; and in every such action the jury may give such damages as they shall deem a fair and just compensation, not exceeding five thousand dollars, with reference to the pecuniary injuries resulting from such death to the wife and next of kin of such deceased person, provided, that every such action shall be commenced within two years after the death of such person; but nothing herein contained shall affect any suit or proceeding heretofore commenced and now pending in any of the courts of this state.

Actions in
whose
name to be
brought.

23 N. Y., 159, 466; 22 N. Y., 194; 14 N. Y., 314; 30 B., 102; 3 Bos., 67; 2 Hilt., 356; 3 E. D. S., 103.

§ 2. Every agent, engineer, conductor, or other person in the employ of such company or person through whose wrongful act, neglect or default the death of a person shall have been caused as aforesaid, shall be liable to be indicted therefor, and upon conviction thereof may be sentenced to a state prison for a term not exceeding five years, or in a county jail not exceeding one year, or to pay a fine not exceeding two hundred and fifty dollars, or both such fine and imprisonment.

Agents, &c.
liable to be
indicted.

GENERAL STATUTES
OF THE
STATE OF NEW YORK; &C.

PART III.

ADMINISTRATION OF CIVIL JUSTICE.

CHAPTER I.

Courts of General Jurisdiction.

CHAP. 128.

AN ACT relating to the Supreme and Circuit Courts.

PASSED April 13, 1832.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. Where, in any personal action, any bill of exceptions shall be taken, demurrer to evidence put in, case made, or notice of motion given for new trial on newly discovered evidence, and the proceedings shall not be stayed, the party in whose favor the verdict is rendered, may perfect his judgment and issue execution; but it shall nevertheless be lawful for the other party to proceed to obtain a hearing before the supreme court upon the matters in question, in the manner hereinafter mentioned; and in case their judgment shall be in his favor, they may set aside the proceedings with the verdict, and order restitution, which may be enforced by such writs of restitution as are used in cases of reversal in error, or by

Proceed-
ings on bill
of excep-
tions and
demurrer
in any
personal
action.

PART III.

motion and attachment, according to the practice of the court in cases of attachment.

14 W., 244; 12 W., 242, 255.

Hearing before circuit judge.

§ 2. The cases mentioned in the first section of this act, shall in the first instance be heard and decided by the circuit judge of the circuit in which the cause was tried, or by such other circuit judge as shall hold the courts mentioned in the fifth section of this act,

His powers in such cases.

§ 3. Upon such hearing, the circuit judge who holds said court, shall have and exercise the same power in the cases mentioned in the first section, as is now possessed by the justices of the supreme court.

Hearing before supreme court on appeal.

§ 4. In the cases herein before mentioned, either party may bring the cause to a hearing thereon before the supreme court, by appeal, after the circuit judge shall have decided the same; but no such cause shall be so brought before the supreme court for hearing, unless a bond, with sufficient sureties, to be approved by the circuit judge, or the first judge of the county in which the venue is laid, whose approval shall be endorsed thereon, shall be executed to the other party, in the manner and of the effect mentioned in the seventh section of this act, or unless he obtain an order from the said circuit judge, or one of the justices of the supreme court, staying the proceedings in the suit.

12 W., 242.

Circuit judge to hold court every three months.

§ 5. Every circuit judge shall hold a court once at least every three months, for hearing arguments of the matters hereby committed to his decision, at such times and places within his circuit as he shall appoint; notice of which shall be given by the circuit judge, as is by law required in relation to chancery courts in the several circuits.

[Section 6 obsolete.]

Security how to be given.

§ 7. The security to be given as above provided, shall be a bond by two sureties, with or without the party, and shall be in the penalty of two hundred dollars; and the condition of it shall be, that the party appealing shall pay all such costs as shall accrue and be adjudged against him upon such appeal. The bond shall be filed in the office of one of the clerks of the supreme court; and the proceedings shall not be stayed until such bond be filed, and notice thereof given.

12 W., 242; 13 W., 656.

Rules.

§ 8. It shall be lawful for the supreme court to make rules for the practice, in cases provided for in this act.

CHAP. 14.

AN ACT to compel defendants in the court of chancery to answer in certain cases.

PASSED January 30, 1833.

The People of the State of New York, represented in Senate and Assembly, do enact as follows :

§ 1. A defendant shall be compelled to answer any bill in chancery, where by law a bill may now be filed, charging the defendant with being a party to any conveyance or assignment of any estate or interest in lands, goods or things in action, or of any rents or profits arising therefrom, or to any charge on any such estate, interest, rents or profits, made or created with intent to defraud prior or subsequent purchasers, or to hinder, delay or defraud creditors or other persons, or where the defendant shall be charged with any fraud whatever, affecting the right or property of others.

Cases in which defendant must answer.

§ 2. No such answer shall be read in evidence against any party thereto on any complaint, or on the trial of any indictment for the fraud charged in such bill.

Answer not to be read in evidence.

CHAP. 159.

AN ACT relative to the court of errors and the supreme court.

PASSED April 17, 1833.

The People of the State of New York, represented in Senate and Assembly, do enact as follows :

§ 1. The governor may, at any time during the vacation of the court for the trial of impeachments and correction of errors, or the supreme court, if he shall deem it requisite, by reason of war, pestilence, or other public calamity, or the danger thereof, that the next ensuing term or session of any such court shall be held at a different place from that where such term or session is required to be held by law, appoint such different place for the holding of such court or session as he shall deem expedient. And at any time thereafter he may revoke such appointment and appoint a new, or leave such term or session to be held at the place where it would have been held by law.

Governor may alter place for holding courts.

§ 2. Every such appointment or revocation shall be by writing, under the hand of the governor, and shall be recorded in the office of the secretary of this state; it shall also be published in such and so many newspapers as the governor shall direct, and the expense of such publication shall be paid out of the treasury.

Proclamation to be recorded.

PART III.
Process.

§ 3. Whenever such term or session shall be held at any place so appointed by the governor, all process shall be returned and all persons held to appear at such place, as if such term or session was held at the place where by law the same was to have been held.

Adjournment.

§ 4. In case any court shall not be formed at the place so appointed, by five o'clock in the afternoon of the first day of the term or session, the same may be adjourned to the next day by the same officer, and in like manner and with the same effect as provided by law, in case the place of holding such court had not been altered.

Id.

§ 5. If at any time during any session or term of the aforesaid court, or either of them, it shall be deemed by the said court improper or inexpedient by reason of war, pestilence, or other public calamity, or the danger thereof, that the said term or session should be continued at the place where the same is then holding, the said court may, by order entered in their minutes, adjourn the session of said court, to be holden at such other times and places as they may direct; and the said adjourned sessions shall be taken as a part and continuance of the said term; and all proceedings in the said court may be continued at said adjourned times and places, and be of the force and effect as if said court had continued its session at the place it was holden before said adjournment.

CHAP. 193.

AN ACT to authorize the appointment of Circuit Courts.

PASSED May 17, 1841.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Circuit
Judge may
appoint a
time of
holding
court when
the regular
time is
omitted.

§ 1. Whenever any circuit court appointed for any county shall have failed after the opening of the court, and before the same shall have been adjourned without day, by reason of the sickness or inability of the circuit judge to continue the court, the circuit judge shall have power to appoint a time and place for holding the said court in said county, which time shall be at a day as early as may be practicable, and shall without delay cause notice of such appointment of such circuit court to be published in the state paper, the expense of which publication shall be paid out of the treasury as in other cases, and causes may be noticed for trial and tried at such circuit in like manner as at a state circuit.

CHAP. 277.

AN ACT in relation to proceedings in the Court of Chancery against absent, concealed, or non-resident defendants, unknown owners in partition, and to the foreclosure of mortgages by advertisement.

PASSED April 12, 1842.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. The one hundred and twenty-second section of the second title of the first chapter of the third part of the Revised Statutes is hereby amended, by adding thereto the following subdivision:

3. When the last known place of residence was within this state, but his residence at the time cannot, on due inquiry, be ascertained by the complainant or his solicitor.

9 B., 482.

§ 2. The one hundred and twenty-third section of the said title is hereby so amended as to read as follows:

The order shall require the defendant to appear and answer the bill as follows:

1. If he be a resident of the state within two months from its date.

2. If his last known place of residence was in this state, but his present place of residence cannot on due inquiry be ascertained; or if he be a resident of some other of the United States, or of one of the territories thereof, or of either of the British Provinces in North America, or the Republic of Texas, within three months from its date.

3. If he be a resident of any other state or country not before mentioned, within six months from its date.

§ 3. The one hundred and twenty-fourth section of the said title is hereby so amended as to read as follows:

Within twenty days from the date of such order, a notice thereof shall be inserted in the state paper, and in such other public newspaper printed in this state, as the court shall direct; such publication shall be continued in each of such papers once at least in each week, for three weeks in succession, which notice shall be substantially in the following form:

"Before the chancellor," or "Before the vice-chancellor of the circuit," as the case may be, "A. B. vs. C. D. and others."

"Bill for foreclosure of mortgage," or "Bill for partition of lands," or, as the case may be, "E. F. of complainant's solicitor."

"G. H. one of the defendants in this cause, whose place of residence is in or, whose place of residence is unknown, is required to appear in this cause, by the day of next, or the bill filed therein will be taken as confessed by

Residence.

Defendant, when to appear.

Notice to be inserted in newspapers

PART III.

him." But such publication shall not be necessary, provided a copy of such order shall have been served on such defendant personally, at least twenty days before the time prescribed for the appearance of such defendant.

Applicable
to suits in
partition.

§ 4. This act shall apply to suits instituted for the partition of lands, as well as to all other suits instituted in the court of chancery, and shall be applicable to unknown owners in partition suits; and so much of section two of the act entitled "An act in relation to the partition of lands," passed April 21, 1831, as requires any different order, or the publication of a different notice, or for a different time than as in this act prescribed, is hereby repealed.

Amend-
ment.

§ 5. The third section of the fifteenth title of the eighth chapter of the third part of the Revised Statutes is hereby amended by striking out the words "twenty-four," and inserting in their place the word "twelve," in each subdivision thereof, so that the said section as amended will read as follows:

Mortgage
sale.

§ 3. Notice that such mortgage will be foreclosed by a sale of the mortgaged premises, or some part of them shall be given as follows:

1. By publishing the same for twelve weeks successively, at least once in each week, in a newspaper printed in the county where the premises intended to be sold shall be situated, or if such premises shall be situated in two or more counties, in a newspaper printed in either of them.

2. By affixing a copy of such notice, at least twelve weeks prior to the time therein specified for the sale, on the outward door of the building where the county courts are directed to be held, in the county where the premises are situated; or if there be two or more such buildings, then on the outward door of that which shall be nearest the premises. And by delivering a copy of such notice at least twelve weeks prior to the time therein specified for the sale to the clerk of the county in which the mortgaged premises are situated, who shall immediately affix the same in a book prepared and kept by him for that purpose; and who shall also enter in said book, at the bottom of such notice, the time of receiving and affixing the same, duly subscribed by said clerk, and shall index such notice to the name of the mortgagor; for which service the clerk shall be entitled to a fee of twenty-five cents.

Thus amended by Laws of 1857, ch. 308.
29 B., 301.

Repeal.

§ 6. The twelfth section of the act entitled "An act to reduce the expense of foreclosing mortgages in the court of chancery," passed May 14, 1840, is hereby repealed. And the eighth section of the fifteenth title of the eighth chapter of the third part of the Revised Statutes is hereby amended, so as to read as follows:

Effect of
sale

§ 8. Every sale pursuant to a power as aforesaid, and conducted as herein prescribed, hereafter made to a purchaser in

good faith, shall be equivalent to a foreclosure and sale under the decree of a court of equity; so far, only, as to be an entire bar of all claim or equity of redemption of the mortgagor, his heirs and representatives, and of all persons claiming under him or them, by virtue of any title subsequent to such mortgage; and also, of any person having a lien by any judgment or decree upon the land, or any part thereof, contained in such mortgage, subsequent to such mortgage, and of every person having any lien or claim by or under such subsequent judgment or decree.

As amended by Laws of 1842, ch. 324.

CHAP. 312.

AN ACT to amend certain parts of the Revised Statutes in relation to the bringing of appeals and writs of error.

PASSED May 7, 1844.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

[Section 1 amends § 35 of art. 1, title 3, chap. 9 of the third part of Revised Statutes.]

§ 2. In all cases which may hereafter be carried by writ of error from any court of common pleas to the supreme court, the prevailing party in the supreme court shall recover his costs.

Costs when to be recovered.

§ 3. The 31st section of the act entitled "An act concerning costs and fees in courts of law, and for other purposes," passed May 14, 1840, is hereby repealed.

Repeal of Revised Statutes.

9 B., 506.

CHAP. 377.

AN ACT in relation to the appointment of terms of the supreme and circuit courts and courts of oyer and terminer.

PASSED November 17, 1847.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. In all cases where the supreme court have or shall omit to appoint in any county as many general or special terms of that court or as many terms of the circuit court or court of oyer and terminer for any year as the law does or shall require to be held in such county in such year, the governor, secretary of state and comptroller shall appoint so many terms of such courts to be held in such county as will make up such deficiency, and shall assign a justice or justices of the supreme court to preside at or hold the same, and

Duty of governor, secretary of state and comptroller in certain cases.

PART III.

Additional
terms,
when and
how ap-
pointed.

shall be the duty of the justice or justices so assigned to pre-
side at or hold the terms of such courts so appointed.

§ 2. Whenever it shall be represented to the governor that
the interests of the public or of suitors require the holding in
any county of any general or special term of the supreme
court or of any term of the circuit court or court of oyer and
terminer in addition to those appointed by the supreme court,
it shall be the duty of the governor, secretary of state and
comptroller, if they shall be of the opinion that the interests
of the public or of suitors require the holding of any such
additional term in such county, to appoint the same and to
designate a justice or justices of the supreme court to preside
at or hold the term so appointed, whose duty it shall be to
preside at or hold the same.

Order to be
filed with
clerk of
court of
appeals.

§ 3. Whenever any term of any court shall be appointed
pursuant to the provisions of this act, the order appointing
the same shall be filed with the clerk of the court of appeals
and shall be published in the newspaper printed in Albany in
which legal notices are required to be published, four weeks
successively.

CHAP. 185.

AN ACT in relation to proceedings pending before the
late circuit judges.

PASSED April 5, 1848.

*The People of the State of New York, represented in Senate
and Assembly, do enact as follows:*

Appeals
made to
circuit
judges to
be heard
and deter-
mined.

§ 1. The supreme court organized by the act entitled "An
act in relation to the judiciary," passed May 12, 1847, shall
have jurisdiction of, and are hereby empowered to hear and
determine, all appeals taken from any decision made by any
surrogate, in relation to the probate of any will of real or
personal estate, or both, to any of the late circuit judges.
And the said supreme court shall possess the same powers,
and exercise the same jurisdiction over such appeals, as were
conferred by law upon any of the late circuit judges; and
may make such orders in all appeals heretofore made from
such decisions by surrogates, which were before any of the
late circuit judges, as shall be just.

CHAP. 30.

AN ACT to vest certain special powers in the justices of the supreme court heretofore vested in the vice-chancellors of the state.

PASSED February 7, 1849.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. Any special powers and jurisdiction heretofore vested and existing in any vice-chancellor or judge of the supreme court, in any particular district or circuit prior to the first Monday of July, eighteen hundred and forty-seven, shall be, and are hereby transferred to, and vested in any justice of the supreme court, elected for such district or districts, subject to an appeal to the supreme court: Provided, that nothing in this act shall be held to limit or abridge the powers and jurisdiction of the supreme court, as defined by the Code of Procedure as now adopted.

Certain powers vested in justice of supreme court.

CHAP. 333.

AN ACT in relation to the court of appeals.

PASSED April 10, 1849.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. There shall be at least five terms of the court of appeals in each year, to be held at such times and places as the court shall appoint, and continued as long as the public interests may require.

Terms in each year.

§ 2. The court may be held at a different place in the same city or town from that at which it is appointed to be held, and the court may, in its discretion, adjourn any term from the city or town where it is appointed to be held, to any other city or town.

Where held.

§ 3. Any one or more of the judges may adjourn the court with the like effect as though all were present.

Adjournment.

§ 4. The ninth section of the "Act in relation to the judiciary," passed May 12, 1847, and the thirteenth section of the Code of Procedure, are hereby repealed.

Repeal.

CHAP. 1.

AN ACT authorizing the governor to designate a justice or justices of the supreme court to hold the circuit court, and the courts of oyer and terminer, in certain cases.

PASSED January 28, 1850.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Governor to designate justices to hold courts in certain cases.

§ 1. Whenever, from any cause, any general or special term of the supreme court, or any circuit court, or court of oyer and terminer, duly appointed, shall be in danger of failing, it shall be the duty of the governor to designate some justice or justices of said supreme court, who shall hold said courts respectively.

CHAP. 15.

AN ACT for the relief of suitors in the supreme court, in certain cases.

PASSED February 15, 1850.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Causes when heard in another district.

§ 1. Whenever an action in the supreme court can not be brought to argument and decision in the district where the same is pending, by reason of the justices of such district, or any of them, having been employed as counsel, or being interested therein, or of kin to the parties or any of them, the court may, upon special motion, order such action to be brought to argument in any adjoining district to be specified in such order, and then such cause shall be heard and decided in such district.

CHAP. 41.

AN ACT in relation to the Court of Appeals.

PASSED March 2, 1850.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

In case of absence, governor to designate a judge.

§ 1. Whenever any judge of the court of appeals, being a justice of the supreme court, shall be absent from the court, or there shall be a reason to believe that he will not attend, the governor shall designate some justice of the supreme court, from the class of justices having the shortest time to

serve, to supply the place of such absent judge; and such justice shall attend and be a judge of the court of appeals, until such absent judge, or some one duly qualified to take his place, shall attend the court.

§ 2. The last clause of section two, title one, chapter three of the third part of the Revised Statutes shall not apply to any judge of the court of appeals.

Revised
Statutes not
to apply.

CHAP. 163.

AN ACT in relation to the powers of the late Court of Chancery and Supreme Court in Equity in certain cases.

PASSED April 12, 1851.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. No person who has heretofore executed any assignment of any interest in any real estate to any receiver, in pursuance of an order of the late court of chancery, or supreme court in equity, his heirs or assigns, nor any person claiming by, from, or under them or any of them, shall be permitted to question the validity of such assignment to said Receiver or any sale or conveyance made by him of the assigned property by reason of the want of any power or authority in either of those courts to make such order or to direct such sale and conveyance providing said courts shall have acquired jurisdiction of the persons and subject matter of the suit, and shall have proceeded according to the rules and practice of said courts.

Assignor
may not
impeach
assignment
to receiver.

§ 2. This act shall not affect any suit or proceeding now pending in regard to any such assigned property, nor the title thereto of any purchaser in good faith for a valuable consideration.

Not to
affect ex-
isting suits.

CHAP. 374.

AN ACT in relation to the Supreme Court of the first Judicial district.

PASSED April 16, 1852; three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. In addition to the circuit courts now authorized by law to be held in the city and county of New York, sittings for the trial of all issues of facts triable by a jury, may from time to time be held in said city and county, at such times as the chief judge of the court of appeals may from time to time appoint.

Sittings in
addition to
courts now
held.

PART III.
Chief judge
to appoint
the sittings.

§ 2. It shall be the duty of the chief judge of the court of appeals, whenever applied to for that purpose by the presiding justice in the first district, to appoint so many of said sittings in any one year as he may deem necessary, to assign some justice of the supreme court to hold the same, and to designate the class of business which shall be noticed for and triable at said sittings; and it shall be the duty of the justice so appointed to hold the said sitting as herein provided for.

Statutes to
be appli-
cable.

§ 3. All the statutes now in force in reference to circuit courts in the city and county of New York, or elsewhere, not inconsistent with this act, shall be applicable to the sitting herein provided for.

Chief judge
to assign
some jus-
tice to sit.

§ 4. It shall be competent for the said chief judge, whenever applied to for that purpose by any one of the justices of the supreme court, elected in the first district, to assign some justice of that court to sit in the general or special terms in said district.

Several
circuits
may be sit-
ting at the
same time.

§ 5. It shall be lawful for several circuits to be sitting at the same time in the city and county of New York, and for one or more circuits, and the sittings to be held at the same time.

A sum may
be raised by
tax to pay
expenses.

§ 6. It shall be lawful for the board of supervisors of said county to raise by tax upon said county and pay to the justices, so as aforesaid assigned to hold any of said courts therein, such sum for expenses incurred thereby as may be proper and necessary.

To pay
extra to
justices of
supreme
court.

§ 7. It shall be lawful for the said board of supervisors to raise by tax upon said county and pay to the justices of the supreme court, resident in the first district, such additional annual compensation as they may deem proper.

Justice of
supreme
court to be
elected for
8 years.

§ 8. There shall be elected in the city and county of New York, at the next general election, and thenceforward at every eighth successive general election, a justice of the supreme court, who shall hold office for eight years; such justice shall enter upon the discharge of the duties of his office on the first day of January succeeding each election. All the provisions of law relating to justices of the supreme court of the first judicial district, and to the mode of their election shall apply to said justice and to the mode of his election.

CHAP. 421.

AN ACT to authorize the enrollment of decrees of the late court of chancery.

PASSED June 18, 1858.

The People of the State of New York, represented in Senate and Assembly, do enact as follows :

Order for
enrollment.

§ 1. The court of appeals, or any judge thereof, in term or vacation, shall have power, upon satisfactory proof that any

final order or decree of the late court of chancery has not been properly enrolled, to make an order for the due enrollment thereof, or for an amendment of the enrollment thereof, to the same extent and with the like effect that the said court of chancery might have done.

CHAP. 75

AN ACT in relation to pleadings in courts of record.

PASSED March 23, 1854.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. The verification of any pleading, in any court of record in this state, may be omitted in all cases where the party called upon to verify would be privileged from testifying as a witness to the truth of any matter denied by such pleading.

Verification omitted in certain cases.

2 Hilt., 257.

CHAP. 530.

AN ACT to authorize the county judge of the several counties in this state to appoint a crier of the courts of record to be held in and for said county.

PASSED April 14, 1855.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. The county judge of each of the counties in this state is hereby authorized to appoint, from time to time, as shall be necessary, a suitable person to discharge the duties of crier of the courts of record to be held in and for said county, such person to be paid the same compensation, and in the same manner as justices of the sessions are now paid, and to hold his office during the pleasure of the said county judge.

County judge to appoint crier.

CHAP. 792.

AN ACT to establish the compensation of the Judges of the Court of Appeals and of the Justices of the Supreme Court.

PASSED April 18, 1857; three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. The compensation of a judge of the court of appeals is established at the sum of three thousand five hundred dollars a year, payable at the end of each quarter

Salaries.

PART III.

§ 2. The compensation of a justice of the supreme court is established at the sum of three thousand five hundred dollars a year, payable at the end of each quarter.

§ 3. This act shall not apply to the compensation of any judge or justice now in office during the continuance thereof.

CHAP. 167

AN ACT in relation to preferred causes in the supreme court and court of appeals.

PASSED April 5, 1860.

The People of the State of New York, represented in Senate and Assembly do enact as follows:

Certain
actions to
have pref-
erence.

§ 1. Actions in which executors and administrators are sole plaintiffs or sole defendants, shall have a preference in the court of appeals and in the supreme court, at the general term thereof, over all actions except in criminal cases, and may be moved out of their order on the calendar.

§ 2. Appeals which prevent the issuing of letters testamentary or of general administration, shall also have a preference for hearing in the court of appeals and in the supreme court, over all actions except criminal cases, and may be moved out of their order accordingly.

CHAP. 86.

AN ACT relative to the printing of the calendars of causes in the several courts of record in this state.

PASSED March 29, 1862 ; three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Courts to
order cal-
endar
printed.

§ 1. The several courts of record in this state, excepting the city and county of New York, at any general term thereafter to be held, may from time to time make orders to be entered in its minutes by which the clerk of such court shall be authorized to cause the necessary number of calendars of causes prepared to be used, either at the general, special or trial terms of such courts or at circuits, to be printed for the use of the court, bar and officers required to attend upon such courts.

Expense to
be a charge
on county.

§ 2. The expenses of such printing shall be a charge upon the county in which said printing is done and used, and shall be audited, allowed and paid by the board of supervisors thereof as other contingent county charges are paid.

CHAPTER II.**Courts of Special Jurisdiction.****CHAP. 24.**

AN ACT to authorize Justices of the Peace to take affidavits in certain cases.

PASSED January 29, 1831.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. All affidavits hereafter to be made by any imprisoned debtor, under the one hundred and fifty-third section of article ninth, title fourth, chapter second of the third part of the Revised Statutes, may be taken before a justice of the peace. And all affidavits which have been made by any imprisoned debtor before a justice of the peace, under said section, shall be as valid, (and have the same force and effect, as if made before an officer authorized to take affidavits,) except in cases in which suit or suits may have been commenced at the passage of this act, involving the question of illegality of such oaths.

Under imprisoned debtor act.

7 W., 516.

CHAP. 7.

AN ACT to amend the act entitled "Of Courts held by Justices of the Peace."

PASSED January 24, 1832.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. The party procuring a certiorari need not execute the bond required by law to be given in such case; and the same shall be sufficient if executed by two or more securities, whose competency shall be approved by the judge allowing the certiorari, or the justice on whose judgment the certiorari is brought.

Bond on certiorari.

4 Cow., 505, 540; 7 Cow., 428.

CHAP. 211.

AN ACT to amend the provisions of the Revised Statutes entitled "Of the removal of Causes to the Court of Common Pleas by Certiorari."

PASSED April 21, 1832.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Allowance
of certiorari.

§ 1. Any officer authorised to perform the duties of a justice of the supreme court at chambers, may allow writs of certiorari upon judgments rendered before justices of the peace in any county of this state.

[Section 2 temporary.]

CHAP. 42.

AN ACT to amend the Revised Statutes relative to the removal of causes to the courts of common pleas by certiorari.

PASSED March 4, 1833.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Informality
of bond on
certiorari.

§ 1. No certiorari shall be dismissed, on account of any informality or other imperfection in the bond executed by or in behalf of the party obtaining such certiorari, if he and his sureties consent to amend the same, or if another sufficient bond to be approved by the court, shall be filed; and in such case, the court shall amend or receive such bond accordingly.

CHAP. 235.

AN ACT in relation to issuing attachments for witnesses by justices of the peace in certain cases.

PASSED May 1, 1834.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Attachment
against
witness.

§ 1. The proof required to obtain an attachment for a witness in any suit before a justice of the peace by section eighty-three, of chapter second, part third of the Revised Statutes, may be made by the affidavit of the party in the suit applying for such attachment, or by other competent testimony, to the satisfaction of the justice before whom such suit is pending.

CHAP. 526.

AN ACT to prevent unreasonable litigation in cases of appeal and certiorari from justices' courts.

PASSED May 26, 1836.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. In all actions of appeal or certiorari which may hereafter be brought from a justices' court to any court of common pleas, the judgment of such court of common pleas shall be final and conclusive between the parties, except in cases provided for in the next section of this act. But nothing in this act shall be so construed as to prevent such court of common pleas from granting a new trial where by law a new trial may now be granted.

Final judgment.

22 W., 628.

§ 2. The first judge of such court of common pleas, or if there be no first judge, or he shall be absent from his county, then any other judge of such court who was present at the trial or hearing of such cause, may, in his discretion, on application of either party aggrieved by such judgment, at any time within thirty days after the record of judgment shall have been filed, grant a certificate that in his opinion the cause is a proper one to be carried to the supreme court, in which case (and in no other) a writ of error may be brought to the supreme court on giving security as now required by law, but no costs shall be allowed to the plaintiff in error on reversing such judgment in the supreme court; but he shall be liable to pay costs as now provided for by law, in case such judgment shall be affirmed; and the judge who shall decide upon the propriety of such certificate, or who shall grant the same, shall be entitled to one dollar, to be paid by the party applying therefor.

Causes when to be carried to supreme court.

CHAP. 138.

AN ACT to amend certain acts in relation to courts held by justices of the peace.

PASSED April 27, 1841.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. When a commission shall be applied for and granted on the part of the plaintiff, pursuant to the provisions of an act entitled "An act to amend Articles eight and thirteen of Title four, Chapter two, Part Three of the Revised Statutes,

Plaintiff allowed privilege of adjournment.

PART III.

relating to courts held by justices of the peace," passed April 18, 1838, the plaintiff shall be allowed the same time and privileges of adjournment to which the defendant is now entitled by law.

25 B., 274; 7 B., 631; 7 H., 77; 3 H., 499.

Power to
issue sub-
pœnas.

§ 2. When the commission is executed in this state, the commissioners shall have the same power to issue subpoenas, swear witnesses and compel their attendance as justices of the peace have.

Fees al-
lowed.

§ 3. In case of commission for either party, the following fees and disbursements shall be allowed by the justice, in addition to the costs now allowed by law, although the whole may exceed five dollars, viz.:

To the justice for every order for a commission to examine witnesses, attending, settling and certifying interrogatories to be annexed to a commission, fifty cents.

To one or more commissioners for taking and returning testimony in the whole, one dollar.

For every subpoena or oath, six cents.

For serving subpoenas and attendance of witnesses before such commissioners, the same fees as are now allowed by law in justices' courts.

For postage for sending and returning commission with testimony, not to exceed one dollar.

CHAP. 141.

AN ACT concerning justices' courts.

PASSED April 27, 1841.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Transcript
of judg-
ments to be
given in
certain
cases.

§ 1. Whenever a judgment shall be rendered by a justice of the peace, on default and in the absence of the party against whom the same is rendered, it shall be the duty of such justice, on the demand of any person interested therein, to give to such person a transcript of such judgment, together with a copy of the process, pleadings and proofs in the cause, when such pleadings and proofs are reduced to writing, or the substance thereof when not reduced to writing, or such parts of such process, pleadings and proofs as may be required, on his being paid therefor twenty-five cents for such transcript and six cents a folio for the residue thereof.

CHAP. 321.

AN ACT concerning suits on attachment bonds.

PASSED May 26, 1841.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. In all cases when a suit shall be presented in any court of record upon any bond, taken in pursuance of the provisions of the several statutes authorizing the issuing of attachments by justices of the peace, if the plaintiff shall recover therein, but his damages shall be assessed at a sum less than fifty dollars, he shall not recover costs, but shall pay costs to the defendant.

Provision
respecting
costs in
certain
cases.

§ 2. An action of covenant may be prosecuted for the breach of the condition of any bond mentioned in the first section of this act, before any justice of the peace and judgment rendered therein, as in other cases, for any sum not exceeding the penalty of such bond.

Action for
breach of
covenant.

CHAP. 242.

AN ACT to allow transcripts of Justices' judgments to be transferred from one county to another, and when so transferred to be a lien on real estate.

PASSED May 13, 1845.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. Whenever a party to a judgment rendered before a justice of the peace, shall file a transcript thereof in the cases now provided by law, with the clerk of the county where such justice resides, to make such judgment a lien on any real estate of the person or persons against whom such judgment was rendered, the party obtaining such judgment may take a transcript of the docket of such judgment as entered in the office of such county clerk, duly certified under his seal of office, and may file the same in the office of the clerk of any other county, and such judgment shall thereby become a lien on any real estate of the party against whom such judgment was rendered, in any county where the same may be filed.

Copies of
transcripts
may be filed
in other
counties.

14 N. Y., 16; 4 B., 442; 9 B., 378; 8 A. B., 435.

§ 2. Any clerk of any county receiving such transcript and certificate, shall enter and docket the same as a judgment in courts of record, and on the request of the party in whose favor the said judgment may be, shall issue execution as now provided in cases of judgments filed and docketed from a justice of the same county.

Duty of
county
clerk.

CHAP. 140.

AN ACT in relation to the jurisdiction of the justices court.

PASSED May 8, 1846.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Restriction
on tavern
keepers.

§ 1. No justice of the peace being an inn-holder or tavern-keeper in fact, shall have any power or jurisdiction under the provisions of title four, of the second chapter of the third part of the Revised Statutes: but if a judgment shall have been actually rendered before a justice before he became so disqualified, he may issue execution thereupon, as in other cases.

7 B., 337; 4 D., 165; 7 H., 77; 13 J. R., 218; 8 J. R., 409; 2 Cai. R., 108.

CHAP. 276.

AN ACT extending the powers of a justice of the peace, as to issuing executions after the term of his office has expired.

PASSED May 13, 1846.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Power
extended.

§ 1. Any justice before whom any judgment shall have been entered, and whose term of office shall have expired, may issue or renew executions on any such judgment, after the expiration of his said office, at any time within two years from the time said judgment shall have been rendered, subject however, in other respects, to the provisions as to issuing executions on justice's judgments.

11 N. Y., 284; 4 W., 512.

CHAP. 512.

AN ACT authorising Justices of the Peace to renew executions.

PASSED April 15, 1857.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Renewal.

§ 1. If any execution, issued by a justice of the peace upon a judgment rendered by him, be not satisfied, it may from time to time be renewed by said justice, by an endorsement thereon to that effect, signed by him, and dated when the same shall be made. If any part of such execution has been

satisfied, the endorsement of renewal shall express the sum due on the execution. Every such endorsement shall be deemed to renew the execution in full force, in all respects for sixty days from the date thereof.

6 W., 663; 12 W., 145; 2 H., 329; 11 N. Y., 281.

§ 2. All laws inconsistent with this act are hereby repealed.

CHAPTER III.

General Provisions as to Courts.

CHAP. 499.

AN ACT concerning the reference of causes.

PASSED May 25, 1836.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. In any cause which may be referred to referees, it shall be the duty of the court or judge ordering the reference, with the consent of parties, to appoint such one person as sole referee therein, as may be agreed on by said parties. One may be appointed.

§ 2. Such referee shall possess the powers and be subject to the provisions of article four, title three, chapter six of the third part of the Revised Statutes. His powers.

16 B., 578.

CHAP. 129.

AN ACT to provide for the better security of certain public records.

PASSED March 29, 1838.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. No record of conveyance of real estate, or other record, whereof a transcript duly certified may by law be read in evidence, shall be removed by virtue of any subpoena duces tecum from the proper office in which such record shall be kept; and no such record shall at any time be removed from such office, except when temporarily removed by the clerk having such record in custody to the courts of which he is clerk, and to courts held in the city or village where the office of such clerk is situated, unless by order of some court of record, made in open court and entered in the minutes thereof, which order shall specify that the production of such record instead of such transcript is necessary. Records not to be removed by virtue of a subpoena.

CHAP. 303.

AN ACT in relation to the powers and duties of certain judges.

PASSED May 1, 1839.

The People of the State of New York, represented in Senate and Assembly, do enact as follows :

Restriction. No judge shall directly or indirectly, take any part in the decision of any cause or question, which shall be brought or defended in the court of which he is a judge, by any person acting as an attorney or counsellor with whom he shall be interested or connected as a partner in any other court.

As amended by Laws of 1841, ch. 272.

CHAP. 346.

AN ACT to amend title first of chapter third of part third of the Revised Statutes.

PASSED May 6, 1839.

The People of the State of New York, represented in Senate and Assembly, do enact as follows :

Ex-officio judges. § 1. Section fifth of title first of chapter third of part third of the Revised Statutes, shall not apply to an ex-officio judge of any court in this state, when such ex-officio judge does not officiate as a judge of such court in the trial of causes or take part in the decision of causes ; such ex-officio judge shall not directly or indirectly be interested in the costs of any suit, that shall be brought in the court of which he is such ex-officio judge.

CHAP. 38.

AN ACT to enlarge the powers of certain courts of record and judges of such courts.

PASSED February 23, 1841.

The People of the State of New York, represented in Senate and Assembly, do enact as follows :

Powers granted to certain courts to compel the production of books and papers. § 1. The superior court of the city of New York, and every court of common pleas, recorder's or mayor's court in this state, shall possess and exercise in all cases pending before such courts respectively, the same powers as are conferred by the Revised Statutes upon the supreme court to compel the discovery and production of books, papers and documents in causes pending before such court.

11 N. Y., 580.

§ 2. The rules and practice adopted, and to be from time to time adopted or modified by the supreme court under the Revised Statutes, referred to in the first section of this act, shall be the practice to be adopted by the other courts to which that law is extended, except as the same may be modified by the rules of said courts respectively, as to the length of any notice, or the time in which any act is to be done.

[Section 3 obsolete.]

CHAP. 56.

AN ACT respecting suits and legal proceedings by or against banking associations.

PASSED March 16, 1841.

The People of the State of New York, represented in Senate and Assembly, do enact as follows :

§ 1. Actions instituted against any association established or to be established under the provisions of the "Act to authorize the business of banking," passed April 18, 1838, or of any act amending the same, may be commenced by declaration, and copies of such declaration may be served on the president or cashier of such association, and in their absence on any director at the usual place of business thereof, or in such other manner as the court in which such action is brought may direct. But all such actions shall nevertheless be commenced only against the persons and in the manner prescribed or permitted by the acts above mentioned.

Actions
may be
commenced
by declara-
tion.

§ 2. Any person who shall be or shall have been an associate or shareholder of any such association, may in respect of any demand which he may have, either solely or jointly with any other person, against such association, commence and prosecute, either solely or jointly (as the case may be), any action, suit or other proceeding in law and equity against the president of such association ; and any president of such association may commence and prosecute any action, suit or other proceeding in law or equity, against any person who may be or who may have been an associate or shareholder of such association, either alone or jointly with any other person, against whom such association may have any demand whatever. All such suits or proceedings by or against such president, shall be conducted and have the same legal effect as if such associate or shareholder had never been a member of such association. Nor shall any action or suit be in any way affected by reason of the plaintiff's or defendant's or any other person who may be in any way interested in such action, being or having been a shareholder or associate of such association. Nor shall it be necessary in any process, pleading or proceeding in behalf of or against any such association, to name the individuals composing the same.

Actions
how to be
commenced
and prose-
cuted by
associates
or share-
holders.

PART III.
Interest in
stock or
dividends
not to be
set off
against
such de-
mands.

§ 3. No claim or demand which any associate or shareholder may have in respect to his share or interest in the capital or joint stock of any such association, or of any dividends, interest or profit thereon, shall be capable of being set off either at law or in equity against any demand which such association may have against any associate or shareholder thereof. But all other demands may be set off in the same manner as in suits between individuals; and in any suit against the president of any such association, as president thereof, he may set off demands belonging to it, in the same manner and with the same effect as if such association was the nominal party in the cause.

CHAP. 112.

AN ACT in relation to the powers of receivers and committees of lunatics and habitual drunkards.

PASSED April 28, 1845.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Receivers
may take
and hold
real estate.

§ 1. Any receiver appointed by virtue of an order or decree of the court of chancery, may take and hold real estate upon such trusts and for such purposes as the court may direct, subject to the further order or direction of the court from time to time in relation to the disposition of such real estate.

9 N. Y., 147; 29 B., 70; 28 B., 36, 38; 16 B., 296, 303; 14 B., 190; 1 B. Ch., 592.

Powers of
receivers
and com-
mittees of
lunatics and
drunkards.

§ 2. Receivers and committees of lunatics and habitual drunkards, appointed by any order or decree of the court of chancery, may sue in their own names, for any debt, claim or demand transferred to them, or to the possession and control of which they are entitled as such receiver or committee; and when ordered or authorized to sell such demands, the purchaser thereof may sue and recover therefor, in his own name, but shall give security for costs to the defendant as the court in which such suit is brought may direct.

CHAP. 163.

AN ACT to authorize the reference of certain actions at law.

PASSED May 9, 1845.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Reference
when to be
made.

§ 1. Whenever any personal action other than those now by law authorized to be referred shall be at issue in any court of record, such court may, by the consent of all parties, order

the same to be referred to such referee or referees as shall be agreed upon by the parties.

16 B., 576; 2 B., 105; 3 D., 380.

§ 2. Such referees shall possess the powers and be subject to the provisions of article four, title six, chapter six, of the third part of the Revised Statutes.

Powers of referees.

CHAP. 231.

AN ACT relating to bail in the court of chancery, and for other purposes.

PASSED May 13, 1845.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. Whenever a bail bond shall have been taken on the arrest of any party to any suit or proceeding in the court of chancery, the bail or sureties therein may surrender their principal, or he may surrender himself, in exoneration of his bail, in the manner hereinafter provided.

Bail may surrender principal.

§ 2. To effect such surrender, two copies of such bond, proved by the affidavits of the officer to whom the same was given, or certified by the officer with whom the same shall have been filed, to be true copies, shall be produced before the chancellor or vice-chancellor before whom such suit or proceeding is pending, and an order of commitment shall be made by such officer before whom said copies are produced, on one of such copies, and be delivered to the officer who originally arrested the party, whose duty it shall be to receive such party and hold him in his custody, in virtue of the original process against him and his arrest thereon, and to obey the exigency of such process, in the same manner as if such bail bond had not been given; and the other of such copies shall be filed with the order for the discharge of the bail, with the officer who issued the process, in virtue of which such party was arrested; and such order when filed, together with an acknowledgment of the receipt of the person by the proper officer, shall operate as a discharge of the said bail or sureties from all further liability. But if a suit has been commenced against such bail, the said suit shall be discharged on such terms or conditions as shall be deemed just by the court in which said suit is pending, on application to such court for that purpose and not otherwise.

How to be effected.

§ 3. If the arrest of the party was made on a writ of ne exeat, and the surrender was upon a bond given on such arrest, the sheriff, unless restrained by an order of the chancellor or vice-chancellor, may by virtue of the said writ, and the arrest made thereon, release the said party from his custody, on his executing to the officer a new bail bond with

Provision in case of arrest on the ne exeat and surrender on bond

PART III.

satisfactory sureties, with the like penalty and condition as before; and if the arrest of the party was by virtue of any other process, the party shall not again be discharged from the custody of the sheriff on bail, except by the order or permission of the chancellor or vice-chancellor. When new bail shall be given, and the party discharged from custody on such bail, the bond shall be of the same form and effect, and the liability of the officer shall be the same as upon an original arrest.

Provision
in case of
subsequent
imprison-
ment.

§ 4. Whenever a bail bond shall have been taken on an arrest of any party to a suit or proceeding, either in a suit at law or in equity, and such party shall be subsequently imprisoned, either in this state, or in any other state or territory of the United States, or in Canada, or elsewhere on a criminal charge, the court in which such suit or proceeding is pending shall have power, upon due notice to the opposite party, to make such reasonable order for the relief of such bail as they may see fit to grant.

CHAP. 120.

AN ACT in relation to district attorneys and to prevent their law partners from acting as counsel in certain cases.

PASSED April 30, 1846.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Restriction
on partner
of district
attorney.

§ 1. No attorney, solicitor or counsellor shall directly or indirectly advise in relation to or aid or take any part whatever in the defence of any cause, matter, suit or proceeding which shall be brought, carried on, aided, advocated or prosecuted in any court of civil or criminal jurisdiction, by any person as district attorney, or other public prosecutor with whom he shall be interested or connected, either directly or indirectly, as a partner in the same or any other court; or take or receive, directly or indirectly, of or from any defendant therein, any fee, gratuity or reward, for or upon any cause, consideration, pretence, understanding or agreement whatever, either express or implied, having relation thereto, or to the prosecution or defence thereof.

Restriction
as to attor-
neys, solici-
tors or
counsellors
who acted
as district
attorneys.

§ 2. No attorney, solicitor or counsellor, who shall have brought, carried on, aided, advocated or prosecuted, or shall have been in any wise connected with any cause, matter, suit or proceeding in any court, as district attorney, or other public prosecutor, shall at any time thereafter, directly or indirectly advise in relation to, or aid or take any part whatever in the defence thereof, or take or receive, either directly or indirectly, of or from any defendant therein, or other person, any fee, gratuity or reward, for or upon any cause, consideration, pre-

tence; understanding or agreement whatever, either express or implied, having relation thereto, or to the prosecution or defence thereof.

§ 3. Every attorney, solicitor or counsellor who shall violate either of the two preceding sections, shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be punished by fine or imprisonment, or both, at the discretion of the court; and he shall be removed from office in the several courts in which he is licensed. Penalty.

§ 4. This act shall not be construed to prohibit any attorney, solicitor or counsellor from defending himself in person, if prosecuted, either civilly or criminally. Savings clause.

CHAP. 277.

AN ACT to provide for the payment of certain expenses of government, to fix the salaries of certain judicial and other officers and for other purposes.

PASSED May 12, 1847; three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

[The following sections of the Supply Bill alone belong here.]

§ 4. Any separate officer elected to perform the duties of the office of surrogate, shall receive an annual salary, which shall be fixed by the board of supervisors, and paid at the close of each quarter by the county in which he shall be elected, and such salary shall not be increased or diminished during his continuance in office. Surrogates.

§ 5. All local officers elected in any county of this state, to discharge the duties of county judge and surrogate, and exercise such other powers in special cases as may be provided by law, shall, for their services respectively, be paid by the county in which they shall be elected, such reasonable compensation as the board of supervisors of such county may deem proper to allow. Officer discharging duties of judge and surrogate.

§ 11. Whenever any public officer is or shall be required by law to keep an account of, or pay over to any county treasurer or to the state treasurer the fees of his office, such fees shall be deemed to include all fees which such officer shall be entitled to receive for any act or duty done by him in his official capacity, whether such act or duty pertains to his office or the business thereof or not. Officers to account for all fees.

§ 12. The clerk of the court of appeals shall appoint some proper person to be his deputy, by writing under his hand and seal, to be filed in his office; and every person so appointed deputy shall take and subscribe the constitutional oath of office; whenever said clerk is absent or shall be sick or incapable of performing the duties of his office, and whenever his office shall be vacant, his deputy so appointed, may Clerk of court of appeals to appoint a deputy.

PART III.

perform all the duties appertaining to such office during such absence, sickness, inability or vacancy.

May employ
assistants
in his office.

§ 13. The clerk of the court of appeals may, until otherwise provided by law, with the approbation of the secretary of state, comptroller and treasurer, from time to time employ such and as many assistants in his office as shall be necessary, and the compensation of such assistants and the deputy clerk shall be fixed by the secretary of state, comptroller, and treasurer, and shall be paid to them at the close of each quarter.

Rooms for
his office.

§ 14. The trustees of the state hall shall assign suitable rooms therein for the office of the clerk of the court of appeals.

CHAP. 280.

AN ACT in relation to the judiciary.

PASSED May 12, 1847.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

ARTICLE FIRST.

OF THE COURT FOR THE TRIAL OF IMPEACHMENTS.

A court of
record.

Terms
where held.

§ 1. The court for the trial of impeachments shall be a court of record, and when summoned shall be held at the capitol in the city of Albany, and the clerk and officers of the senate shall be the clerk and officers of said court, and the president of the senate shall preside therein, and in his absence the chief judge of the court of appeals shall preside, and in the absence of the president of the senate and said chief judge, such other member shall preside as the court shall elect.

18 N. Y., 61.

Seal of the
court.

§ 2. A suitable seal for said court shall be procured and kept in the custody of the clerk of the senate, and a description thereof shall be deposited and recorded in the office of the secretary of state, which description shall there remain of record.

What laws
applicable
to the court
organized
by this act.

§ 3. All laws relating to the court for the trial of impeachments, the jurisdiction, powers and duties thereof, the proceedings therein, and the officers thereof, and their powers and duties, shall be applicable to the court for the trial of impeachments organized by this act, the jurisdiction, powers and duties thereof, the proceedings therein, and the officers thereof, and their powers and duties, so far as the same can be so applied and are consistent with the constitution and the provisions of this act.

ARTICLE SECOND.**OF THE COURT OF APPEALS.**

§ 4. The judges of the court of appeals elected by the electors of the state, who shall be first elected, shall be classified by lot to be drawn by the secretary of state, or in his absence by the comptroller, in the presence of the comptroller, attorney-general, treasurer and surveyor-general, or a majority of them, at the office of the secretary of state, immediately after the completion of the canvass of the votes given at the first election of such judges. A certificate of said drawing and classification shall be signed by the secretary of state, comptroller, attorney-general, treasurer and surveyor-general, or a majority of them, and filed and recorded in the office of the secretary of state. The classes shall be numbered one, two, three and four, according to the time of service of each; the class having the shortest time to serve being number one, and the term of office of the judge so drawn in class number one, shall end on the thirty-first day of December, one thousand eight hundred and forty-nine; in class number two, on the thirty-first day of December, one thousand eight hundred and fifty-one; in class number three, on the thirty-first day of December, one thousand eight hundred and fifty-three; and in class number four, on the thirty-first day of December, one thousand eight hundred and fifty.

Judges of the court how classified.

Certificate to be filed and recorded.

Classes how numbered.

§ 5. The judge of the court of appeals elected by the electors of the state, who shall have the shortest time to serve, shall be the chief judge of said court.

Chief judge.

§ 6. Four justices of the supreme court to be judges of the court of appeals, shall every year be selected from the class of said justices having the shortest time to serve; and alternately, first, from the first, third, fifth, and seventh judicial districts, and then from the second, fourth, sixth and eighth judicial districts; and shall enter upon their duties as judges of the court of appeals on the first day of January, and serve as judges of said court one year, except that those first selected shall enter upon their duties on the first Monday of July next, and continue in office until and including the last day of December, one thousand eight hundred and forty-eight. Six judges of the court of appeals shall be necessary to constitute a quorum for holding any term of said court.

What justices of supreme court to be judges of.

3 N. Y., 567.

§ 7. No writ of error, appeal, or other process or proceeding shall be abated by reason of such court not being held at any time appointed for that purpose.

No writ, &c. to abate

18 N. Y., 133; 22 N. Y., 108.

§ 8. The court shall have full power to correct and redress all errors that have happened or may happen, in the present supreme court and court of chancery, and that may happen in

Errors in chancery

PART III
and su-
preme
court.

the supreme court organized by this act; and all laws relating to the court for the correction of errors, the jurisdiction, powers and duties thereof, the proceedings therein, and the officers thereof, and their powers and duties, shall be applicable to the court of appeals organized by this act; the jurisdiction, powers and duties thereof, the proceedings therein, and the officers thereof and their powers and duties, so far as the same can be so applied, and are consistent with the constitution, and the provisions of this act.

1 N. Y., 533; 9 B., 660; 3 D., 609.

[Section 9 repealed by Laws of 1849, ch. 333.]

Powers, &c.
respecting
supreme
courts.

Remitting
record.

Remitting
decrees, &c.

§ 10. The court shall examine all errors that shall be assigned or found in any record brought from the present supreme court, or in any process or proceeding touching the same, or in any record of the supreme court, organized by this act; and shall reverse or affirm any such judgment, or give such other judgment as the law may require; and the transcript of such record, with the judgment of the court of appeals therein, shall be remitted to the supreme court organized by this act, where such further proceedings may be had as shall be necessary to carry such judgment into effect; and the court of appeals shall have power to reverse, affirm, or alter, any order or decree of the present court of chancery, or of the supreme court organized by this act in equity cases, and make such other order or decree therein as justice shall require; and after the same is so heard and determined, all the proceedings, together with the judgment, decree or order of the court of appeals therein, and all things concerning the same, shall be remitted to the supreme court, and such further proceedings had in that court as may be necessary to carry such judgment, decree or order into effect; and such proceedings shall be remitted to the office of the county clerk with whom the record was filed, or by whom said order was entered, or decree enrolled, and if said judgment was rendered, or said order or decree entered or enrolled in the present supreme court or court of chancery, then to such county clerk as the court of appeals shall direct.

1 N. Y., 229; 3 D., 609.

Writ of
error how
brought.

Appeals
how
brought.

§ 11. Writs of error issuing out of the court of appeals to remove judgments from the present supreme court, and the supreme court, organized by this act may be brought in the same manner, within the time, with like effect, and upon the same terms as writs of error have been heretofore brought to remove judgments in the supreme court to the court for the correction of errors; and said writs of error in criminal and civil cases, may be allowed and all necessary orders thereon made by a judge of the court of appeals, a justice of the supreme court, or by a county judge. And appeals may be brought from the orders and decrees of the present court of chancery, and if the supreme court organized by this act in

equity cases, in the same manner, on the same terms, within the time, and with like effect as appeals from the orders and decrees of the court of chancery to the court for the correction of errors have heretofore been allowed and brought; and when the approval of any bond, or any order is required on such appeal, the same may be approved and made by any judge or justice hereby authorized to allow writs of error. And all laws relating to writs of error and appeals to remove causes at law and in equity to the court for the correction of errors, shall apply to the removal of causes to the court of appeals so far as the same are applicable and consistent with the constitution and the provisions of this act.

1 N. Y., 229; 3 D., 609.

§ 12. All writs of error duly brought to remove any judgment of the present supreme court into the court for the correction of errors, and all appeals from any order or decree of the present court of chancery to the court for the correction of errors, which shall not have been dismissed, and shall remain undecided on the first Monday of July next: and all business pending in said court for the correction of errors, shall be on the day last aforesaid transferred to and vested in the court of appeals; and said court of appeals shall on and after that day have jurisdiction thereof; and all recognizances and bonds, or other security, shall remain as valid and effectual as they were in said court for the correction of errors, and would have been, had said court for the correction of errors continued; and all recognizances, bonds, or other security, shall be subject to the order, decree or judgment of the said court of appeals, as the same would have been to that of the court for the correction of errors, if that court had continued, and with like effect.

Certain proceedings pending in, &c. transferred to court of appeals.

§ 13. A term of the court of appeals shall be held on the first Monday in July next, at the capitol in the city of Albany.

Term of the court.

ARTICLE THIRD.

OF THE SUPREME AND CIRCUIT COURTS.

§ 14. The justices of the supreme court elected at the first election thereof, shall be classified by lot, to be publicly drawn by the secretary of state, and in his absence by the comptroller, in the presence of the comptroller, attorney-general, treasurer, and surveyor-general, or a majority of them, at the office of the secretary of state, immediately after the completion of the canvass of the votes given at the first election of such justices; and a certificate of said drawing and classification shall be signed by the secretary of state, comptroller, attorney-general, treasurer and surveyor-general, or a majority of them, and filed and recorded in the office of the secretary of state. The classes shall be numbered one, two, three and four, according to the time of service of each, the class having the shortest time to serve, being number one, and the term of

Justices of supreme court, when and how classified.

PART III.

office of those so drawn in class number one, shall end on the thirty-first day of December, one thousand eight hundred and forty-nine; in class number two, on the thirty-first day of December, one thousand eight hundred and fifty-one; in class number three, on the thirty-first day of December, one thousand eight hundred and fifty-three; and in class number four, on the thirty-first day of December, one thousand eight hundred and fifty-five.

23 N. Y., 296.

Presiding
justices
designated.

§ 15. The justice of the supreme court in each judicial district having the shortest time to serve, and who is not a judge of the court of appeals nor appointed or elected to fill a vacancy in the first class, shall be a presiding justice in the supreme court, and in case of the death, absence or inability of the presiding justice appointed to hold any general term of the supreme court, any three justices convened to hold such term may designate one of their number to preside at such general term.

As amended by Laws of 1848, ch. 170.
15 B., 153.

Its powers
and juris-
diction.

Powers of
justices.

§ 16. The supreme court organized by this act, shall possess the same powers, and exercise the same jurisdiction as is now possessed and exercised by the present supreme court and court of chancery; and the justices of said court shall possess the powers, and exercise the jurisdiction now possessed and exercised by the justices of the present supreme court, chancellor, vice-chancellors, and circuit judges, so far as the powers and jurisdiction of said courts and officers shall be consistent with the constitution and provisions of this act. And all laws relating to the present supreme court and court of chancery, or any court held by any vice-chancellor, and the jurisdiction, powers and duties of said courts, the proceedings therein and the officers thereof, their powers and duties, shall be applicable to the supreme court organized by this act, the powers and duties thereof, the proceedings therein, and the officers thereof, their powers and duties, so far as the same can be so applied and are consistent with the constitution, and the provisions of this act.

14 N. Y., 579; 13 N. Y., 591; 10 N. Y., 387; 6 N. Y., 89; 21 B., 348
16 B., 377, 592; 2 Du., 547.

Writs of
error to
common
pleas or
county
courts.

§ 17. Writs of error may be brought to review judgments of the present courts of common pleas, or of the county courts, in all cases in which such writs of error may now be brought to remove judgments from the courts of common pleas to the present supreme court; and writs of error and certiorari may be brought to remove judgments, and suits and proceedings, from any court of oyer and terminer, and from the present courts of general sessions of the peace, and courts of sessions, in all cases where such writs may now be brought to remove judgments and suits and proceedings from the courts of oyer and terminer, and from courts of general sessions of the

CHAP. III.

Appeals
from county
courts and
surrogates.

Appeals,
&c. by
whom
allowed.

peace; and appeals may be brought from the decisions, decrees or orders of the county judge, acting as surrogate, or other officer acting as such, in all cases where appeals may now be brought from surrogates to the chancellor or circuit judge; and appeals may be brought from the decisions, decrees or orders in equity, of the county court or county judge, in all cases in which appeals may be now brought from the decisions, decrees or orders of a circuit judge or vice-chancellor to the chancellor; and said writs of error, and writs of certiorari shall issue from and be returnable to, and appeals hereby authorized, shall be brought to the supreme court organized by this act. And when the allowance of any appeal, writ of error, or writ of certiorari, or approval of any bond or surety, or taking any recognizance or justification of any bail or surety, shall be necessary to remove any judgment, order, or decree, or suit or proceeding, to the said supreme court, the same may be allowed, approved or taken by any judge of the court of appeals, justice of the supreme court, county judge or local officer elected to discharge the duties of county judge and surrogate. And all laws respecting appeals, writs of error and writs of certiorari, the time, manner and effect of bringing the same, and the security to be given, and staying proceedings thereon shall be deemed to apply in such cases, so far as the same are applicable, and consistent with the constitution and the provisions of this act.

22 B., 85, 275; 16 B., 592; 11 B., 663; 1 B., 528.

§ 18. Appeals from any order or decree, made by any vice-chancellor or assistant vice-chancellor, before the first Monday of July next, may be brought to the supreme court organized by this act, in the same manner and within the time, and on the same terms, and with like effect as is now allowed from said orders and decrees to the chancellor.

Certain
appeals
brought to
supreme
court.

§ 19. There shall be a general term of the supreme court held in every county in this state, having a population exceeding forty thousand, at least once in each year, and as much oftener as the business of the county shall require; and in every other county, except Hamilton, as often as once in two years, and as much oftener as the business of the county shall require; and said terms in said last mentioned counties, shall be so arranged that at least one term shall be held in each county, or in a county adjoining, in every year. The supreme court, at the term thereof to be held, pursuant to the twenty-fourth section of this act, shall appoint the times and places of holding the general and special terms thereof, and the terms of the circuit courts and courts of oyer and terminer; and may at any other general term, provide for holding terms in cases when any such terms shall not have been held, as appointed by an order entered with the clerk of the county in which the alteration is made, two months before said change takes effect; and said clerk shall immediately cause said order to be published four weeks successively in a

General
terms of
supreme
court when
held.

Notice
thereof to
be given
and pub-
lished.

PART III.

Adjourned
circuit
courts.

newspaper printed in said county, and also in the newspaper printed at Albany, in which legal notices are required to be inserted, the expense of which publication shall be a county charge; and all writs, process, bonds, recognizances, and other proceedings, shall be returnable, heard, tried and determined accordingly, and shall not be otherwise affected by such appointments. The places so appointed for holding said courts, shall be at the court houses or places in the respective counties provided by law for holding county or circuit courts. Any circuit court may be continued by adjournment to such time as the justice holding such circuit, shall, by a rule to be entered in its minutes, direct; and such adjourned circuit, may be held and continued by further adjournment, as often as the justice holding such court shall deem necessary, and causes may be noticed for trial, and tried at any such adjourned circuit, in like manner and with the same effect as at a stated circuit.

See Laws of 1847, ch. 470, § 44.

Special
terms of
supreme
court.Orders may
be made.

Re-hearings

§ 20. There shall in each year, be at least two special terms of said court held in each county, except Hamilton, and as many more as the public business shall require, to hear and determine non-enumerated business in suits and proceedings at law, and to take testimony, and hear and determine suits and proceedings in equity; and orders in suits and proceedings at law, and orders and decrees in suits and proceedings in equity, may be made at such special terms; and all suits and proceedings in equity in said supreme court, shall be first heard and determined at a special term of said court unless the justice holding such special term shall direct the same to be heard at a general term. In case any suit or proceeding in equity, shall be heard and determined at a special term either party may apply at a general term of said court for a re-hearing; and every justice, at the time and place of holding a circuit court, may hold a special term of the supreme court. But no special term, held at the time and place of holding any circuit court as aforesaid, shall be deemed one of the two special terms of said court, required to be held as directed by the first part of this section.

See Laws of 1847, ch. 470, § 44; 8 B., 572; 3 D., 609.

Circuits to
be held.

§ 21. There shall in each year, be held at least two circuit courts in each of the counties in this state, except Hamilton, and in the city and county of New York, there shall be at least four of said courts in each year. And jurors shall be drawn and summoned therefor, and attend said courts, as now required for circuit courts.

See Laws of 1847, ch. 470, § 44.

Powers and
jurisdiction
of circuit
courts.

§ 22. Circuit courts shall possess the same powers, and exercise the same jurisdiction now possessed and exercised by the circuit courts of this state, so far as the powers and jurisdiction of said courts shall be consistent with the constitu-

tion and the provisions of this act. And all laws relating to the present circuit courts, and the jurisdiction, powers and duties of said courts, the proceedings therein, and the officers thereof and their powers and duties, shall be applicable to the circuit courts organized by this act, their powers and duties, the proceedings therein, and the officers thereof, and their powers and duties, so far as the same can be so applied and are consistent with the constitution and the provisions of this act.

§ 23. Each of the justices of the supreme court, shall during his term of office, be employed in holding the general and special terms of the supreme court, the circuit courts and courts of oyer and terminer, in each of the several judicial districts, in proportion as nearly equal as may be, to the business of such courts in such districts respectively, or shall be so employed in at least as many of such districts as he shall have years to serve from the commencement of his term; and the duties of such justices shall be so assigned, that each justice shall hold an equal proportion, as near as may be, of the general and special terms of the supreme and circuit courts and courts of oyer and terminer. But nothing in this section contained, shall prevent any justice from supplying the place for the time being, of any justice who may be sick or absent, or whose office may be vacant; and it shall be the duty of any justice not engaged in holding any other term of said courts, to supply the place of any justice as aforesaid.

Justices of the supreme court to be employed in holding general and special terms, &c.

§ 24. A general term of the supreme court organized by this act, shall be held at the capitol in the city of Albany, and commence on the first Monday of July next; and said court shall at said term, if a majority of all the justices of the court be present by an order to be entered by the clerk of the court of appeals, acting as clerk of the supreme court, arrange and appoint the general and special terms of said court, and the terms of all the circuit courts and courts of oyer and terminer, and assign the business and duties to the justices thereof respectively, and establish, revise, and alter the rules of said court; which order shall be published in the newspaper printed at Albany in which legal notices are required to be published, six weeks successively. And a like term of said court shall be held at the same place, and commence on the second day of January, one thousand eight hundred and fifty, and on the second day of January every second year thereafter, at each of which terms a like order shall be entered and published as aforesaid. If the second day of January aforesaid shall happen on Sunday, said term shall commence on the succeeding day.

A general term of supreme court to be held at capitol, &c.

General and special terms, &c. then to be appointed.

Order to be published and mode of publication.

10 B., 377.

§ 25. Justices of the peace, and judges and justices of inferior courts not of record, and their clerks, may be removed as provided by the constitution, by the supreme court at any general term thereof.

Supreme court at a general term may remove justices, &c.

ARTICLE FOURTH.

OF COUNTY AND SURROGATES' COURTS, AND POWERS OF THE COUNTY JUDGE.

[For section 26, see Laws of 1847, ch. 470, § 24.]

[For section 27, see Laws of 1847, ch. 470, § 25.]

No writ,
&c. to
abate.

§ 28. Whenever the county court or court of sessions, or any surrogate's court appointed to be held in any county shall fail, no writ, process, recognizance or other proceeding returnable at, or to be heard or tried in said court, shall be abated, discontinued or rendered void thereby.

Jurisdic-
tion of
county
courts.

§ 29. County courts shall have power and jurisdiction to hear, try and determine, all matters and proceedings specially conferred by statute upon, and heretofore triable and cognizable by courts of common pleas of the several counties; and county judges in their respective counties shall have power to perform all the duties, and do all the acts now required to be done and performed by the judges of the county courts when not holding county courts, or any one or more of them, at chambers or otherwise, so far as those acts and duties are consistent with the constitution and the provisions of this act. But nothing in this section contained, shall be deemed to confer original jurisdiction upon any county court, in any action known to the common law.

5 N. Y., 534.

Powers of
same.

§ 30. The county court in each county shall have power to hear, try and determine according to law, suits and proceedings by scire facias to revive any judgment in said court, or that shall have been rendered in the present court of common pleas of said county, or to have execution of said judgments, or to revive any suit in said county court; also of suits and proceedings for the admeasurement of dower, or for the partition of lands, when the lands are situated in the county where the court is held; also to hear, try and determine according to law the following actions, when all of the defendants at the time of commencing the action, reside in the county in which said court is held; actions of debt, assumpsit and covenant, when the debt or damages claimed shall not exceed two thousand dollars; actions for assault and battery and false imprisonment, when the damages claimed do not exceed five hundred dollars; actions of trespass and trespass on the case for injuries to real or personal property when the damages claimed shall not exceed five hundred dollars; actions of replevin when the value of the property claimed does not exceed one thousand dollars; and also to grant new trials in all such actions, suits or proceedings.

6 N. Y., 178; 5 N. Y., 534; 4 N. Y., 584.

Equity ju-
risdiction.

§ 31. The said county court shall have equity jurisdiction in suits and proceeding in the following cases:

1. For the foreclosure of mortgages when the mortgaged premises are situated in such county;

2. For the sale of the real estate of infants, when the real estate is situated, and the infants reside in such county ;
3. For the care and custody of lunatics and habitual drunkards, residing in such county ;
4. For the satisfaction of judgments and decrees on which there shall remain due a sum exceeding seventy-five dollars out of the property of a debtor, when an execution has been returned unsatisfied, and said debtor resides in such county ;
5. For partition of lands in such county ;
6. For the admeasurement of dower in lands in such county.

24 N. Y., 388; 23 B., 100; 21 B., 216.

§ 32. Surrogates' courts, in counties in which the county judge performs the duties of the office of surrogate, may be held at the time and place at which county courts shall be held, and the order of business of the county court, court of sessions and surrogates' court, shall be under the direction of the county judge; and he shall perform the duties of the office of surrogate at such other times and places within his county, as the public interests shall require.

Surrogates' courts when and where held.

§ 33. In counties, in which the duties of the office of surrogate are performed by a separate officer elected to perform the duties of the office of surrogate, surrogates' courts shall be held at the times and places and in the manner and with the same powers and jurisdiction as now provided by law.

ib.

§ 34. A justice of the supreme court, or a county judge, may allow injunctions in such cases and under such rules and regulations as the supreme court may prescribe.

Injunctions

§ 35. The county court in each county, shall possess the same powers and exercise the same jurisdiction in all cases of appeals from judgments rendered by a justice of the peace, and of writs of certiorari to remove any such judgment; and over any judgment rendered by a justice of the peace whereof a transcript shall have been filed with the clerk of the county in which said county court is held, and of scire facias to have execution of, or revive the same, and over any execution issued by said clerk; whether said transcript shall have been filed before or after the first Monday of July next, as courts of common pleas now have and exercise. And appeals from, and writs of certiorari to remove any judgment rendered by any justice of the peace, may be brought and allowed, in the same manner and with like effect, and within the same time, to said county court, as the same are now brought and allowed to courts of common pleas; and may be allowed, and the bond approved by any judge of the supreme court, county judge or local officer elected to discharge the duties of county judge and surrogate. And all proceedings pending in any court of common pleas, on the first Monday of July next, in suits originally commenced in justices' courts, shall be, on that day, transferred to, and vested in the county court of the same county, and said county court on and after that day,

Jurisdiction in cases of appeal, certiorari and scire facias.

PART III.

shall possess the same powers and exercise the same jurisdiction therein, as courts of common pleas now possess.

30 B., 602.

Further
powers, &c.
of county
courts.

§ 36. County courts shall possess the same powers, and exercise the same jurisdiction in all matters, suits and proceedings at law and in equity, of which they may take cognizance, as are now possessed and exercised by the courts of common pleas of the same county, or the court of chancery, so far as shall be consistent with the constitution and the provisions of this act; and all laws relating to the present courts of common pleas and courts of chancery, the jurisdiction, powers and duties of said courts, the proceedings therein, and the officers thereof and their powers and duties, shall be applicable to the county courts of the respective counties, their powers and duties, the proceedings therein, and the officers thereof and their powers and duties, so far as the same can be so applied, and are consistent with the constitution, and the provisions of this act.

Powers and
duties of
county
judge and
surrogate.

§ 37. The county judge or other officer elected to perform the duties of the office of surrogate, and the local officers elected to discharge the duties of county judge and surrogate, when acting as surrogate, shall possess the same powers and perform all the duties, and exercise the same jurisdiction, as are now possessed, performed and exercised by the surrogates of their respective counties, so far as shall be consistent with the constitution, and the provisions of this act. And all laws relating to the jurisdiction, powers and duties of surrogates, and surrogates' courts and their proceedings, shall be applicable to said judge or other officer, while performing the duties of the office of surrogate, so far as the same can be so applied, and are consistent with the constitution, and the provisions of this act.

ARTICLE FIFTH.

OF CRIMINAL COURTS.

Courts of
oyer and
terminer,
when and
by whom
held.

§ 38. Courts of oyer and terminer of the respective counties, except in the city and county of New York, shall be composed of a justice of the supreme court, who shall preside, and the county judge and the justices of the peace, designated as members of the court of sessions; and the presiding justice, and any two of the other officers above mentioned, shall have power to hold said courts. And said courts shall be held at the same times and places that circuit courts of the same county shall be appointed to be held.

In New
York.

§ 39. The courts of oyer and terminer of the county of New York, shall be composed of a justice of the supreme court, who shall preside, and any two of the following officers: the judges of the court of common pleas of said city and county, the mayor, recorder and aldermen of said city. Said courts shall be held at the same time and place that circuit courts for that county shall be held.

CHAP. III.
Justices
"for ses-
sions" how
and when
designated.

§ 40. At the first election for county judge, and at every general election, after the year one thousand eight hundred and forty-seven, two justices of the peace in each county, except the city and county of New York, shall be designated to hold courts of sessions in their respective counties as follows: Each elector may designate or place upon a ballot, under the words "for sessions," the name of one justice of the peace in the county, having at least two years from the first day of January next after said election to serve, and the two justices of the peace having the greatest number of said votes, shall be deemed designated as members of the court of sessions of that county; those so designated at the first election, until and including the last day of December, one thousand eight hundred and forty-nine; and those so designated after the present year, for two years commencing on the first day of January next after said designation; and at said first election, such justices shall be voted for on the same ballot with the county judge, and thereafter if any county officer shall be then voted for, upon the same ballot with the county officers. And if said justices, or either of them, shall be absent at any term of oyer and terminer, or at any term of said court of sessions, or the office of any such justice shall become vacant, the county judge may, at any such term of the court, supply any vacancy or deficiency during that term, by selecting any justice of the peace of the county, for that purpose.

For amendment see Laws of 1847, ch. 470, § 35.

§ 41. All indictments and proceedings pending in the courts of general sessions of the peace, on the first Monday of July next, shall be transferred on that day to and vested in the courts of sessions of the counties in which the same shall be pending respectively, except in the city and county of New York, and except indictments for crimes which the said courts of general sessions of the peace now have no jurisdiction to try. No indictment, writ, process, notice, recognizance or other proceeding returnable to, or to be heard, tried, or considered in or pending in any court of oyer and terminer or in any general sessions of the peace, on that day shall be abated, discontinued or rendered void by the transfer thereof to any court of oyer and terminer or of the sessions, but the same shall be continued to the first term of the court of oyer and terminer or court of sessions, as the case may be, in the proper county.

Indict-
ments
pending,
&c. trans-
ferred.

No indict-
ment to
abate.

§ 42. Courts of sessions, except in the city and county of New York, shall be held at the time and place at which county courts for the trial of issues of fact by a jury of the same county shall be held, and the same number of grand and petit jurors shall be drawn and summoned therefor, and attend the same as is now required for courts of general sessions of the peace, in the same county.

Courts of
sessions in
New York.

PART III.
Powers and
jurisdiction
of courts of
oyer and
terminer.

§ 43. Courts of oyer and terminer shall possess the same powers, and exercise the same jurisdiction as are now possessed and exercised by the present courts of oyer and terminer of this state, so far as the same shall be consistent with the constitution and the provisions of this act. And all laws relating to the present courts of oyer and terminer, and the jurisdiction, powers and duties of said courts, the proceedings therein, and the officers thereof, and their powers and duties, shall be applicable to the courts of oyer and terminer organized by this act, their powers and duties, the proceedings therein, and the officers thereof, and their powers and duties, so far as the same can be so applied, and are consistent with the constitution and the provisions of this act.

Power and
jurisdiction
of courts of
sessions in
counties.

§ 44. The courts of sessions of their respective counties organized by this act, shall possess the same powers, and exercise the same jurisdiction in their respective counties, as are now possessed and exercised by the courts of general sessions of the peace, so far as the same are consistent with the constitution and the provisions of this act. And all laws relating to the present courts of general sessions of the peace, the jurisdiction, powers and duties of said courts, the proceedings therein, and the officers thereof, and their powers and duties, shall be applicable to the courts of sessions organized by this act, their powers and duties, the proceedings therein, the officers thereof, their powers and duties, so far as the same can be so applied, and are consistent with the constitution and the provisions of this act.

ARTICLE SIXTH.

MISCELLANEOUS PROVISIONS.

Trials of
issues of
fact.
Local
actions.

§ 45. Issues of fact which shall be joined in any surrogate's court to be tried by a jury, shall be tried in the county court of the county in which said surrogate's court is held; and issues of fact which shall be joined in actions for the recovery of any real estate, or for the recovery of the possession of any real estate, or in actions for injuries to real estate, including actions of waste and of nuisance, or in proceedings for the admeasurement of dower, or for the partition of lands, or for the determination of claims to real property, shall be tried in the county where the subject of the action shall be situated; and issues of fact joined in any of the aforesaid actions upon counts in the same declaration for any other cause of action, shall be tried in the same county.

[Section 46 repealed by Laws of 1847, ch. 470.]

Issues of
fact in
equity
where tried

§ 47. Issues of fact in suits and proceedings in equity, if in the county court, shall be tried therein, and if in the supreme court, the same shall be tried in the county where said court shall direct.

Issues of
fact of law
where tried.

§ 48. All issues of fact pending and untried in the supreme court or any court of common pleas on the first Monday of

July next, shall be tried in the county in which the venue shall be laid.

§ 49. The supreme court organized by this act, shall have power to order any issue of fact joined in any suit or proceeding at law or in equity, whether joined in the supreme court or any county court or other court, to be tried in any other county, on good cause shown therefor, and on such terms, and under such rules and regulations as said supreme court shall prescribe. And after the trial thereof, the clerk of the county in which the same shall have taken place, shall certify the minutes thereof, which shall be filed with the clerk of the county where said issue was joined, or the clerk of such other court, and thereupon the proceedings may be continued in said suit or proceeding in said last mentioned county, as if said issue had been tried in that county.

General power of supreme court.

County clerk to certify minutes.

§ 50. All bills and petitions, or other papers to be filed on the commencement of any suit or proceeding in equity shall be filed in the office of the clerk of the county where the defendants, or some or one of them shall reside, unless the object of such suit or proceeding be to obtain a specific performance of a contract to convey lands, to stay proceedings in ejectment, to prevent or abate a nuisance, to prevent waste, to prevent injury to real property, for admeasurement of dower, partition of lands, or to foreclose a mortgage upon lands, in which cases said papers shall be filed with the clerk of the county in which said lands, or some portion of them, are situated. But if all the defendants or parties, proceeded against reside out of the state, said papers, except in the cases above specified, may be filed in any county. And all papers and proceedings in suits and proceedings in equity, shall be filed, and all orders and decrees, wherever made, shall be entered and all decrees enrolled in the office of the clerk of the county where the petition or bill or first papers were filed, unless the supreme court shall by an order direct the papers in such suit to be transferred to the office of the clerk of some other county.

Bills and petitions, &c. where to be filed.

§ 51. All motions in the supreme court organized by this act, both enumerated and non-enumerated, shall be made in the county in which the venue in the suit shall be laid, or in an adjoining county. And if no suit be pending, or if said motion be the first proceeding in any suit, the motion shall be made in the county where the parties in such suit or person against whom the same is made, or some or one of them reside, or in an adjoining county. And motions in said court in suits and proceedings in equity after the first Monday of July next, shall be made in the county where said suit or proceeding is pending, or in an adjoining county; and in suits and proceedings in equity pending on the first Monday of July next in the county where the defendants or some of them reside, or in an adjoining county.

Motions in supreme court where to be made.

PART III.
Decrees in equity and judgments in supreme court where to be docketed.

§ 52. Decrees in equity may be docketed with the clerk of the county where they shall be enrolled, and with the docket of judgments in the supreme court; and all judgments in the supreme court and county court shall be docketed in the county where the record shall be filed in the same manner as judgments in the court of common pleas are now docketed, except that all judgments and decrees in any court of record docketed on and after the first Monday of July next, in any county, shall be docketed in the same book; and any judgment or decree so docketed, shall bind and be a lien and charge upon lands and tenements, real estate and chattels real in said county, which any person against whom said judgment or decree was rendered, may have at the time of docketing the same, or shall acquire at any time thereafter, in the same manner, for the same time, and with like effect, as judgments rendered in the court of common pleas and duly docketed now are, and a transcript of the docket of any decree of the present court of chancery, or judgment of the present supreme court, or of the present court of common pleas, or judgment or decree of the supreme court or county court organized by this act may be filed and docketed with the clerk of any county, and shall thereupon bind and be a lien and charge upon lands, tenements, real estate, and chattels real in the county where said transcript is filed, and said judgment or decree docketed, from the time of filing and docketing the same, and in the same manner, and with like effect, and for the same length of time from the time of filing the record or enrolling the decree, as judgments in the courts of common pleas now are.

Records, &c. by whom signed.

§ 53. All records of judgments and enrollments of decrees shall be signed by the clerk of the court filing the same without any fee or charge therefor.

Executions how issued.

§ 54. Executions to collect judgments in the supreme or county courts organized by this act, and to collect the amount of any decree in equity in said courts directing the payment of any debt, damages, costs or sum of money, may be issued out of the court in which said judgments or decrees shall be rendered, in any county, within the time and with like effect as they may now be issued upon judgments rendered in the supreme court.

10 B., 382.

Executions may be sent to any county.

§ 55. Executions may be issued out of the supreme court organized by this act, into any county to collect any judgment in the present supreme court, rendered on or before the first Monday of July next, and to collect any decree in chancery made on or before that day, directing the payment of any debt, damages, costs or sum of money, within the time and with like effect as they may be now issued from those courts. And executions may be issued out of the county court organized by this act, to collect any judgment in the present court of common pleas of the same county, within the same

time and with like effect as they may now be issued out of that court.

§ 56. All process which shall have been issued before the first Monday of July next, but returnable after that day, except subpoenas for witnesses, shall be returned as follows: If issued out of the present supreme court or court of chancery, they shall be filed with the clerk of the court of appeals, on or before the return day thereof; and if issued out of any court of common pleas, they shall be filed with the clerk of the county in which the judgment was rendered on or before the return day thereof; and all such process may be in the same form and shall be as valid as if said courts had remained unchanged.

Process
issued be-
fore, where
to be filed.

§ 57. Any process issued out of any court of record on or after the first Monday of July next, may be tested on any day in term of vacation, in the name of any judge of the court out of which it shall issue and shall be returnable before said court within the time now provided by law, and shall be filed with the clerk of the court in which the suit or proceeding shall be pending; and if it be to collect or enforce any judgment or decree, it shall be filed with the clerk with whom the judgment record is filed or decree is enrolled; if to collect or enforce any judgment or decree in the present supreme court or court of chancery, then with the clerk of the court of appeal; if to collect any judgment in any court of common pleas that shall be abolished on the first Monday of July next, then with the county clerk of the same county; and if a *capias ad respondendum* issuing out of the supreme court, it shall be returnable before the supreme court in the county in which the venue is intended to be laid on some day in term or vacation, to be specified therein, and shall be returned to and filed with the clerk of that county, and the appearance of the defendant within the time now required, shall be entered in the office of said clerk; and if a *capias ad respondendum* issuing out of the county court, it may be returnable on any day, in term or vacation, to be specified therein. Every court of record shall always be open for the issuing and return of process; and no process which shall be subscribed with the name of the attorney, solicitor, or party by whom it is issued, except such as shall be issued by special order of the court, shall be deemed void or voidable, by reason of having no seal, or a wrong seal thereon, or of any mistake or omission in the test thereof, or in the name of the clerk of the court out of which it shall be issued.

Test and
return of
process.

Courts of
record
always open

§ 58. Writs of *scire facias* to revive any judgment in the present supreme court, or to have execution thereof, or to revive any suit in that court, or any suit in the court of common pleas, which shall on that day be vested in the supreme court organized by this act, may on and after the first Monday of July next, be issued out of, and be returnable in the last mentioned supreme court; and such writs to revive any judgment

Writs of
scire facias
to revive
judgments
in present
supreme
court or
common
pleas how
issued and
returned.

PART III.

in any court of common pleas which shall cease to exist on that day, or to have execution thereof, or to revive any suit in said court not vested as aforesaid, may be issued on and after that day, out of, and be returnable in the county court of the same county. And all such writs shall issue in the same manner, with like effect, and within the time now allowed by law; and if issued out of the supreme court, shall be made returnable to and filed in the office of the clerk of the county in which the venue in the original suit was laid.

Judgments,
&c. pending
in common
pleas vested
in supreme
court to be
reviewed in
same court.

§ 59. Any judgment or decision in any suit or proceeding pending in any court of common pleas on the first Monday of July next, which shall on that day become vested in the supreme court organized by this act, may be reviewed, and other proceedings had therein by said supreme court, in the same manner as can now be done by said court of common pleas or by the present supreme court on a writ of error, certiorari or mandamus. And any decision in any suit or proceeding in a court of common pleas which on that day shall not be vested in the supreme court organized by this act, may be reviewed and new trial granted, or other proceedings had therein, in the proper county court, in the same manner as can now be done by a court of common pleas.

Suits and
proceed-
ings in
present
supreme
court and
court of
chancery
when to be
decided.

§ 60. All suits and proceedings pending in the present supreme court on the first Monday of July next, and ready for hearing, may be heard and decided either by the present supreme court, or by the supreme court organized by this act, at any time previous to the first day of July, eighteen hundred and forty-eight; and if any such cause shall be noticed before both of said courts, any one of the justices of the present supreme court may direct before which court the same shall be heard. And all suits and proceedings pending in the court of chancery before the chancellor, on the first Monday of July next, and ready for hearing, may be heard and decided by the chancellor, or person appointed to fill the office of chancellor, or before the supreme court organized by this act, at any time previous to the first day of July, eighteen hundred and forty-eight; and if any such cause shall be noticed before the chancellor, and also before the supreme court organized by this act, the chancellor may direct before which court the same shall be heard.

Suits before
V. C. to be
heard in
supreme
court.

§ 61. All suits and proceedings pending in the court of chancery, before any vice-chancellor, or assistant vice-chancellor, on the first Monday of July next, and ready for hearing shall be heard and decided by the supreme court organized by this act.

No judg-
ment to be
entered in
present S.
C. after 5th
July, 1847.
Decisions
to be cer-
tified.

§ 62. No judgment shall be entered in the present supreme court after the first Monday of July next, and any decision made after that day in said court shall be certified to such county clerk as said court shall direct, and upon filing said certificate with said clerk, judgment in conformity with said decision may be entered up and enforced in the supreme

court organized by this act, or such other proceeding had therein as shall be necessary to carry said decision into effect; and except for the purpose of hearing and determining said suit or proceeding as aforesaid the same shall be deemed transferred to the supreme court last mentioned on the first Monday of July next.

§ 63. No order or decree shall be entered or decree enrolled in the court of chancery after the first Monday of July next, and upon any decision, decree or order being made after that day in said court, the register shall settle the order or decree under the direction of the chancellor or person appointed to fill the office of chancellor, and the same with the decision in the suit or proceeding shall be certified to such county clerk as the chancellor or person so appointed shall direct, and the papers in the cause shall be remitted to said clerk, and upon filing said certificate and papers with said clerk, said decree or order may be entered and said decree enrolled and docketed by said clerk, and said decree or order enforced as a decree or order of the supreme court organized by this act, or such other proceedings had therein as shall be necessary to carry such decision into effect; and except for the purpose of hearing and deciding said suit or proceeding as aforesaid, and settling the decree or order, the same shall be deemed transferred to the supreme court last mentioned on the first Monday of July next.

No order, .
&c. to be
entered in
court of
chancery;
after, &c.
decisions
to be cer-
tified.

§ 64. All suits and proceedings in the present supreme court or the court of chancery or before the chancellor which shall be ready for hearing or decision on the first Monday of July, eighteen hundred and forty-seven, and which shall not have been heard and determined previous to the first day of July, eighteen hundred and forty-eight, shall, from and after the last mentioned day be deemed wholly transferred to and vested in the supreme court, organized by this act, and all papers, documents, records, books and property then in the custody of the register in chancery or the clerk of the present supreme court relating to such suits and proceedings, shall by them be delivered to the clerk of the court of appeals.

When suits
and pro-
ceedings in
present
supreme
court and
court of
chancery to
be trans-
ferred.

§ 65. The clerks of the several counties including the city and county of New York, by virtue of their offices shall be clerks of the circuit courts, courts of oyer and terminer, and except in the city and county of New York, of the county courts and courts of sessions within their respective counties; and all laws relative to the duties of the clerks of the present supreme and circuit courts, courts of oyer and terminer, general sessions of the peace and common pleas of their respective counties, so far as the same are consistent with the constitution and the provisions of this act, shall apply to them as clerks of the supreme court, circuit courts, courts of oyer and terminer, county courts and courts of sessions in their respective counties. And all laws relative to the duties of register, assistant register and clerks in chancery, so far as the

Clerks of
counties to
be clerks of
circuit
courts, &c.

PART II.

same are consistent with the constitution and the provisions of this act, shall be deemed to apply to the duties of said clerks in suits and proceedings in equity in the courts of which they shall be clerks.

Register in
chancery
how long
continued.

§ 66. The office of register in chancery is hereby continued until the first day of July, eighteen hundred and forty-eight, or until all suits and proceedings ready for hearing or decision in said court shall be sooner heard and determined and no longer; and any vacancy in said office during that time may be filled by the chancellor or person appointed to fill a vacancy in the office of chancellor; and all property, books of every kind, records, documents and papers remaining in the office of said register on the termination of said office, shall within ten days thereafter be deposited by said register with the clerk of the court of appeals, who shall receive and keep the same in his office subject to the order of the supreme court organized by this act. The register shall attend all the terms held by the chancellor after the first Monday of July next.

Records
and papers,
&c. where
to be de-
posited.

Clerk of
present
supreme
court at
Albany,
how long
continued.

§ 67. The office of clerk of the present supreme court to reside at Albany, is hereby continued until the first day of July, eighteen hundred and forty-eight, or until all suits and proceedings in said court ready for hearing and decision shall be sooner heard and determined and no longer; and any vacancy in said office during that time may be filled by the justices of the present supreme court or the persons appointed to fill vacancies in the office of said justices; and all property, books of every kind, records, documents and papers remaining in the office of said clerk on the termination of said office, shall within ten days thereafter be deposited by said clerk with the clerk of the court of appeals, who shall receive and keep the same in his office subject to the order of the supreme court organized by this act. Said clerk of the supreme court shall attend all the terms of said court after the first Monday of July next.

Office of
assistant
register, &c
abolished.

§ 68. The offices of assistant register and clerk in chancery and sergeant of that court are abolished from and after the first Monday of July next, and within twenty days thereafter the register and the clerks in chancery shall deliver all property, books of every kind, records, dockets, documents and papers deposited in and belonging to their respective offices to the clerk of the court of appeals; and the assistant register and clerk of the first circuit shall within the time aforesaid deliver to the clerk of the court of appeals all books of reports deposited in his office, and to the clerk of the city and county of New York all other books and all property, records, documents and papers deposited in or belonging to his office, except as in this act otherwise directed.

Office of
clerk of
supreme
court ex-
cept, &c.
abolished.

§ 69. The office of clerk of the present supreme court (except that of the clerk to reside in Albany,) and crier of that court are abolished from and after the first Monday of July next; and within twenty days thereafter all the clerks

of the present supreme court shall deliver all property, books of every kind, records, dockets, documents and papers deposited in or belonging to their respective offices, to the clerk of the court of appeals, except as follows: The clerk of the said court residing at Geneva shall within twenty days after the first Monday of July next, deliver all books in his office containing the dockets of judgments, to the clerk of the county of Ontario, and within the time aforesaid, the clerk of said court residing at Utica shall deliver all books in his office containing dockets of judgments, to the clerk of the county of Oneida; and within the time aforesaid, the clerk of said court residing in the city of New York shall deliver all property, books, records, dockets, documents and papers in his office except books of law reports and statutes, to the clerk of the city and county of New York, and said books of law reports and statutes he shall deliver to the clerk of the court of appeals.

§ 70. Any clerk with whom said papers, records, documents and dockets shall be deposited may make copies and transcripts thereof and certify the same and receive therefor the fees now allowed by law, and all fees so received by the clerk of the court of appeals shall be paid by him into the treasury of this state. Such copies and transcripts duly certified, may be read in evidence with like force and effect as the original paper, record, document or docket.

Certain clerks may give certified copies and transcripts.

§ 71. On and after the first Monday of July next, all bonds, mortgages, stocks and securities taken in the name of the register, assistant register or any clerk of the court of chancery, or any clerk of the present supreme court, or standing in his name on that day, and all moneys deposited in the New York Life Insurance and Trust Company or in any bank or savings bank in the name of such register, assistant register or clerk, or then in the hands of any of them not invested or deposited, shall be, and the same hereby are on that day vested in the clerk of the court of appeals by virtue of his office. And all such bonds, mortgages and other securities may be sued for in the name of office of said clerk of appeals in the same manner and with like effect as if the same had been originally taken in his name as such clerk. Within twenty days after the first Monday of July next, the register, assistant register and the several clerks of the courts of chancery and the clerks of the present supreme court shall deliver to the said clerk all the bank books and account books in their offices respectively, containing entries relating exclusively to the moneys, funds and securities standing in their names or under their control, and all bonds, mortgages, securities, certificates of stock or of deposits, and vouchers relating thereto; and all moneys directed to be brought into the court of chancery or into the present supreme court, and which shall not have been brought into court before the first Monday of July next shall be deposited with said clerk or in one of the

Bonds, mortgages, and securities vested in the clerk of the court of the appeals.

Duty of register, assistant register, &c

PART III.

Rules re-
specting the
keeping of
funds.

banks in which the deposits of the register and assistant register are now required to be kept, and in the name of such clerk. And all moneys which shall be directed to be brought into court by the supreme court organized by this act or by any county court, shall be paid by said clerk or deposited with such incorporated company or in such bank as the court shall direct in the name of the said clerk; and the supreme court shall from time to time prescribe in what bank or banks or incorporated companies moneys brought into court by order of any court shall be deposited or kept. All bonds and securities which have hitherto been taken in the name of the register or assistant register of the court of chancery, or any clerk of the said court, or of the supreme court or county court, shall, on and after the first Monday of July next be taken in the name of office of the clerk of the court of appeals, and may be sued by him in his name of office, and on and after the first Monday of July next all laws now in force relative to receiving, safe keeping, investing and disbursing, or the transfer of any moneys, stocks or securities brought into the court of chancery, and to the duty of the court and of the register, assistant register and clerks in chancery in relation thereto shall apply to the supreme court organized by this act, and to the county courts, and said clerk for the court of appeals so far as the same are applicable. And all the rules and regulations of the present court of chancery relative to the receiving, keeping and disbursing any of the funds in the court of chancery or depositing or investing the same so far as applicable, shall continue in force subject to the rules and regulations that may be prescribed by the supreme court organized by this act; and said court shall as soon as conveniently may be, and from time to time make such rules and regulations concerning the moneys, stocks and securities in the custody of said court, and concerning the making of deposits, keeping accounts and paying any money of said court as such court shall deem necessary.

9 Paige, 62.

Seal of court
of appeals.

Ib. of
supreme
court, &c.

Ib. of sur-
rogates
courts.

§ 72. The clerk of the court of appeals shall procure a seal for that court, on which shall be engraved "Court of Appeals, New York," with the word "Seal" in the centre thereof. And every county clerk shall procure and keep a seal, on which shall be engraved the name of the county of which he is clerk, and the word "seal," which seal shall be the seal of the supreme court in said county, and the seal of the circuit court and the court of oyer and terminer, and, except in the city and county of New York, of the county court in said county. And the seals of the surrogates of the respective counties of this state, shall continue to be the seals of the surrogates' courts of said counties, and shall be kept and used as such by the county judge or other officer authorized to perform or discharge the duties of the office of surrogate; a description of each of said seals shall be deposited or recorded in the office

of the secretary of state, which description shall remain of record.

[See substitute for § 73 in Laws of 1848, ch. 224.]

§ 74. Of the copies of each volume of said reports so delivered to the secretary of state, he shall deliver one copy to each clerk of the several counties, to be kept by said clerk for the use of the county, and deposit one copy in the office of the attorney-general, one copy with the clerk of the court of appeals, for the use of that court, and three copies in the state library.

Secretary of state to distribute reports.

§ 75. Every person who shall be a solicitor in chancery, or attorney in the supreme court of this state, on the first Monday of July next, shall be entitled to practice as attorney, solicitor and counsellor in all the courts of this state; and every person who shall be an attorney of the court of common pleas of any county on the first Monday of July next, shall be entitled to practice in the county court of the same county; and every male citizen of the age of twenty-one years, applying to be admitted to practice as attorney, solicitor and counsellor in the courts of this state, shall be examined by the justices of the supreme court, which examination shall be at a general term thereof; and if such person so applying shall be found to be of good moral character, and to possess the requisite qualifications of learning and ability, the court shall direct an order to be entered by the clerk thereof, stating that such person has been so examined and found to possess the qualifications required by the constitution; and thereupon such person shall be entitled to practice as an attorney, solicitor and counsellor in all courts in this state, until he shall be suspended from such practice, for cause as hereinafter provided. A copy of such order, certified by such clerk, shall be presumptive evidence of the right of such person to practice as aforesaid; and said court shall, by general rules, prescribe what shall be deemed sufficient proof of good moral character, and no term of clerkship or period of study shall be required. The supreme court organized by this act shall possess the same power to remove or suspend any attorney, solicitor, and counsellor, as is now possessed by the present supreme court and court of chancery.

Solicitors and attorneys.

Who entitled to examination and admittance.

General rules to be prescribed.

Supreme court may remove or suspend any attorney, &c.

3 B., 197.

§ 76. All suits and proceedings against any absconding, non-resident, concealed or fraudulent debtor, or against or by any imprisoned or insolvent debtor, for the removal of a tenant or other person from lands, to take testimony, for the justification of bail or surety, for the appointment of a guardian or next friend, or for the production and discovery of books and papers, or to obtain a bill of particulars of any demand or set off, and any proceeding for a forcible entry and detainer, for the arrest of any fugitive from justice, or service of a writ of habeas corpus, against any corporation, against any person charged with crime, on an appeal from

Certain proceedings pending against absconding and other debtors, &c. transferred to a justice of the supreme court organized by this act, county judge, &c.

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the determination of any commissioner or commissioners of highways, and in any other special matter, suit or proceeding, pending before any justice of the supreme court, circuit judge, vice chancellor or assistant vice chancellor, judge of the existing county courts or supreme court commissioner, on the first Monday of July next, shall, by an order to be made by the officer before whom the same shall be pending, and on such notice as said officer shall direct, be transferred to a justice of the supreme court organized by this act, or county judge, or local officer elected to discharge the duties of county judge and surrogate, or officer now authorized to hear and determine such suit or proceeding, and who shall continue in office after the day last aforesaid; and thereupon such justice, judge or other officer shall possess the same power, and exercise the same jurisdiction over such suit or proceeding, as the officer before whom the same was commenced, could have done, had he continued in office; and if for any cause said order of transfer shall not be made, the supreme court organized by this act, on the application of either party, may by order, make such transfer to such justice, judge or other officer, and any suit or proceeding so transferred, shall not in any manner be abated, or otherwise affected thereby.

2 Du., 547.

Suits and
causes may
be referred.

Sheriffs to
sell lands
in certain
cases.

§ 77. On and after the first Monday of July next, courts of record may, by an order to be entered in any suit or proceeding at law or in equity, refer any matter heretofore usually referred to any clerk, master in chancery or referee, to a clerk of the same court, or to any county judge or local officer, elected to discharge the duties of county judge and surrogate, or other suitable person or persons, in the same manner as references have heretofore been made to any officer or person by any court, and with the same powers as have heretofore been possessed by such officer or person. And on and after that day, sheriffs may sell any lands in their respective counties ordered to be sold by any decree of any court of record in this state, and give conveyances thereof in the same manner, and with like effect, as is now done by a master in chancery. The sheriff shall receive his disbursements for printers' fees. He shall also be entitled to receive the same fees as upon sales by virtue of an execution, but such fees shall in no case exceed the sum of ten dollars. If the amount bid on any such sale, or any part of such amount shall be credited on the decree of sale, or be bid by the person or party in whose favor the decree shall be made, the fees of the sheriff shall be estimated upon the surplus, over and above the amount so credited or bid by such person or party; but if the fees upon the whole sum bid on such sale, would amount to more than five dollars, in case no part thereof were so credited or bid by such person or party, the sheriff shall be entitled to five

dollars if the fees on the sum actually paid would not amount to that sum.

2 S. S. C., 33.

§ 78. On and after the first Monday of July next, the testimony of any competent witness may be taken in this state, to be used in any civil suit or proceeding, on an agreement in writing to that effect being made between the parties, their attorneys or solicitors, and on interrogatories to be agreed upon in the same manner. Said testimony may be taken before a judge of any court of record of this state, or local officer elected to discharge the duties of county judge, or a justice of the peace of this state, who shall, before the interrogatories are put to him, publicly administer an oath to the witness that the answers given to said interrogatories shall be the truth, the whole truth, and nothing but the truth; and the testimony shall be truly and carefully reduced to writing by the officer, and read to the witness and subscribed by him, and certified by the officer. The testimony so taken, together with the interrogatories, shall be filed with the clerk of the courts in which the suit or proceeding shall be pending; and if in the supreme court, and taken in a suit or proceeding at law, the same shall be filed with the clerk of the county in which the venue is laid; if in equity, with the clerk of the county in which the suit or proceeding shall be pending; and if before any court or officer having no clerk, then with said court or officer. And said testimony may be used in evidence on any trial or hearing of such suit or proceeding, and every objection to the competency or credibility of said witness, or to the competency and relevancy of any answer given by him, may be made in the same manner and with the like effect as if such witness were personally examined at such trial or hearing.

Testimony may be taken on interrogatories.

Testimony where to be filed.

§ 79. The attendance of the witnesses before said officer to answer said interrogatories may be enforced in the same manner as now provided by the third title of chapter seven of part third of the Revised Statutes. And any witness who shall swear falsely in answering said interrogatories, shall on conviction thereof, be liable to all the pains and penalties of perjury, in the same manner as if said testimony had been given orally at the trial or hearing of such suit or proceeding.

Attendance of witnesses how enforced.

§ 80. When a cause shall be on the calendar of any court, for the trial of any issue or issues of fact, the said issue or issues may, by consent of all the parties in said cause, be tried by the judge or officer holding said court, without a jury, and the finding of the judge or officer, on said issue or issues of fact, shall in all respects have the same effect as a verdict of a jury thereon and no other; and the said court or judge shall decide all questions of law arising on the trial of such issue or issues, in the same manner as though said cause was tried by a jury; and the practice and rules of the proper courts, as to exceptions, points, cases, bills of exceptions and

Judge alone may try issue of fact by consent of parties.

PART III.

writs of error, shall be applicable and in the same manner as if the cause had been tried by a jury. But nothing in this section shall be deemed to apply to any action for assault and battery, false imprisonment, slander, libel, breach of promise of marriage, criminal conversation, or for seduction of plaintiff's daughter or servant. Nor shall anything herein contained be deemed to deprive any court of the power to refer any cause in cases now referable by law.

2 N. Y., 190.

No judge interested to have a voice in deciding a cause.

No judge or justice can practice as attorney, &c.

Moneys directed to be deposited and kept in counties, where paid in.

§ 81. No judge of any court shall have a voice in the decision of any cause in which he has been counsel, attorney or solicitor, or in the subject matter of which he is interested.

§ 82. No judge of the court of appeals, or justice of the supreme court shall practice as an attorney, solicitor, or counsellor in any court in this state. No county judge shall practice in or act as counsellor, solicitor or attorney in the court of which he is judge, nor shall the partner of such judge practice as counsellor, solicitor or attorney, in his court.

§ 83. All moneys in the custody or under the control of the court of chancery or of the supreme court on the first Monday of July next, shall be deposited, remain, kept and invested in the counties in which the same were paid in, as near as conveniently can be with safety and advantage to the parties interested. And all moneys that shall be paid or directed to be brought into the supreme court or county courts organized by this act, shall be by the order of the court deposited or invested in the county where the same shall be paid or brought in, as nearly as conveniently can be with safety and advantage to the parties interested.

CHAP. 391.

AN ACT authorizing courts of equity to order the sale of rights of pre-emption to real estate or chattels real in certain cases.

PASSED November 22, 1847.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Absolute sale and conveyance when to be decreed by supreme court.

§ 1. In all cases where several persons are the owners or claim to be the owners of any real estate or chattels real, lying within the bounds of the city and county of New York, having different estates or estates in common therein, in possession, remainder or reversion, and which said persons shall by virtue of such ownership, or claim to such ownership, be entitled or claim to be entitled by law to a pre-emptive right to have, take or demand the grant or lease of any other land or easement in land from the mayor, aldermen and commonalty of the city of New York, the supreme court of this state

shall have, and such court is hereby vested with full power and authority on the application of either of said owners, or of the said mayor, aldermen and commonalty of the city of New York to decree an absolute sale and conveyance of such right of pre-emption, and to make such disposition of the net moneys arising from such sale after the payment of the costs and expenses of the proceedings, as shall be just and proper according to the rights and interests of the said several owners.

As amended by Laws of 1848, ch. 32.

§ 2. Such sale shall be made and conducted on like notice by the like officer, and in the same manner and form as sales of real estate on the foreclosure of a mortgage by virtue of a decree or order of said court, and a deed of conveyance for the said right of pre-emption shall in like manner be executed and delivered to the purchaser; which deed shall vest in the purchaser absolutely all the claim, right, title and interest of the owner of the said right of pre-emption, and every of them, of, in or to the said right of pre-emption thus sold and conveyed: provided always, in every case the applicant shall give six weeks previous notice of such intended application if the owners entitled by law to such pre-emption right are residents; and six months' previous notice of such intended application, if the owners are non-residents of the state, by publication in two daily newspapers printed in the city of New York, prior to such application to the court for an order of sale; and provided also, that the court shall be satisfied that such order of sale shall not interfere with, or impair the obligation contained in any lease or contract made by the said mayor, aldermen and commonalty to or with any person or persons whatsoever.

Sale how to be made and conducted.

Proviso.

See Laws of 1848, ch. 32, § 2.

§ 3. In all cases where any owner shall be an infant, a guardian shall be appointed for such infant in such manner, who shall give the like security and possess the like powers and discharge the like duties as in cases for the partition of lands.

Provision in case of infants.

§ 4. Whenever any owner shall reside in the city of New York, notice of such intended application shall be served personally on such owner, or by leaving the same at his dwelling house with some person of suitable age and discretion, at least twenty days before such application is made; and in all cases where such owner shall reside out of the said city, and within any of the United States, and such place of residence be known to the applicant, such notice shall be served by mail, addressed to such owner at his place of residence, at least three months before such application is made. Proof of such service by affidavit shall be made to the court before any order of sale shall be made.

Notice how to be served on owners.

§ 5. Any of the parties to said suit may become the purchaser on such sale.

Parties may purchase.

CHAP. 470.

AN ACT to amend the act entitled "An act in relation to the judiciary," passed May 12, 1847.

PASSED December 14, 1847; "three-fifths being present."

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

[Section 1 temporary.]

Power to adjourn until a quorum attend.

§ 2. If at any time a quorum of the said court shall fail to attend any term thereof appointed to be held by it, such of said judges as may attend shall have power to adjourn the said court from day to day or for a longer time until a quorum of said court shall attend.

Certain judgments in superior court and court of common pleas in the city of New York may be removed into the court of appeals.

§ 3. Writs of error hereafter issued to the superior court or to the court of common pleas of the city of New York for the purpose of removing from the said court suits or proceedings pending, or judgments rendered therein, shall be issued from the court of appeals, instead of the supreme court; and all suits, proceedings, or judgments hereafter removed from the said superior court or court of common pleas, by writ of error, shall be removed to the court of appeals alone.

As amended by Laws of 1848, ch. 222.

No general rule or order of the courts to take effect until published.

§ 4. No general rule or order of the court of appeals or of the supreme court shall be of any force or effect until it shall have been published in the newspaper at Albany, in which legal notices are by law required to be published, once in each week for three successive weeks.

Decisions of supreme court on bill of exceptions in granting or refusing a new trial may be reviewed on appeal.

§ 5. In any action at law, when a decision shall be made by the supreme court of this state or by the justices of the late supreme court, upon a bill of exceptions either in granting or refusing to grant a new trial, any party to such action, conceiving himself aggrieved thereby, may appeal from such decision to the court of appeals, at any time within forty days after the service upon his attorney of a copy of the rule or order granting or refusing to grant such new trial.

Nature of appeal.

§ 6. The filing of security in the office of the clerk of the county in which the trial of the cause was had, together with the service upon the opposite attorney of a notice of such security of the filing of the same, and the objects thereof, shall be deemed and taken as an appeal from such decision of the court of appeals.

Security required to be filed on bringing the appeal.

§ 7. The security to be filed as provided in the last preceding section of this act shall be a bond by two sureties, with or without the party to the opposite party, and shall be in the penalty of three hundred dollars, conditioned that the party appealing shall pay all such costs as shall accrue and be adjudged against him upon such appeal; and no such bond shall be valid unless approved by one of the judges of the

court of appeals, justices of the supreme court, a county judge or clerk of a county.

§ 8. But no such appeal shall prevent the appellee from entering up judgment in the cause where he would otherwise be entitled to do so, or from obtaining satisfaction of such judgment unless the appellant shall obtain and serve an order granted by one of the judges of the court of appeals, justices of the supreme court or a county judge directing a stay of proceedings in such cause.

Judgment may be perfected unless stay of proceedings be granted.

§ 9. Such cause shall be brought to argument in the court of appeals in the same manner as other enumerated motions: and the court shall possess the same powers in all respects in the granting or refusing to grant a new trial as is now possessed and exercised by the supreme court in like cases.

Argument of causes.

§ 10. A transcript of the record of proceedings of the court of appeals in such cause shall be remitted to the supreme court; where such further proceedings shall be had as may be necessary to carry into effect the judgment, order or determination of the court of appeals.

Transcript remitted.

§ 11. Any general or special term of the supreme court may be continued by adjournment to such time as the justices or justice holding the same shall, by an order to be entered in the minutes of such court, direct; and such adjourned term may be held and continued by further adjournment, as often as the justices or justice holding the same shall deem necessary; and notice of the making of motions and of the hearing or argument of causes, may be given for such adjourned term, and motions may be made and causes heard and argued thereat, in like manner and with the same effect, as at a stated term of such court.

General and special terms of supreme court may be adjourned.

§ 12. All appeals from any vice chancellor which may be heard by the supreme court, may be first heard at a general term thereof.

Notice of motions and arguments.

§ 13. Any justice of the supreme court or any county judge may, out of court, allow writs of ne exeat in suits and proceedings in the supreme court, according to the course and practice of such court, in such cases and under such regulations as shall be provided by law or by the rules and regulations of such court not inconsistent with law.

Appeals from vice chancellors. Ne exeat by whom allowed.

§ 14. Any of the proceedings in partition may be had at a general or special term of the supreme court, except the trial of issues of fact, and such issues may be tried at a special term of such court, by the justice or justices holding the same, by consent of all the parties in the cause, and pursuant to the provisions of the eightieth section of chapter two hundred and eighty of the laws of 1847, entitled "An act in relation to the judiciary," passed May 12, 1847.

Proceedings in partition how heard and tried.

§ 15. An application for a commission in any action at law in the supreme court to take the testimony of witnesses not residing within this state, may be made in vacation or term time to any justice of the supreme court or county judge at

Application for commissions how made.

PART III.

chambers in the county of his residence, notwithstanding the venue in such cause shall not be laid in the same or an adjoining county.

Orders in equity before whom heard.

§ 16. Orders in equity which have heretofore been made by the chancellor out of term, may be made by any justice of the supreme court, being or residing within one hundred miles of the county where the solicitor or party making the application resides, at any time either in term or vacation, at chambers, or at any place selected by such justice.

21 B., 349.

Venue in transitory actions.

Papers where to be filed.

§ 17. In all transitory actions, the declaration when filed in any suit in the supreme court, shall be filed in the clerk's office of the county where the venue shall be laid; and all papers afterwards filed in the suit by either party, shall be filed in the same office. The forty-sixth section of the said chapter is hereby repealed.

Bills in equity in aid where to be filed.

§ 18. All bills in equity in aid or defence of any section at law shall be filed in the clerk's office of the county in which the venue in such action shall be laid.

Certain writs, &c. where to be filed.

§ 19. Every writ of process, except subpoenas for witnesses which shall have been issued before the first Monday of July last, and made returnable on or before that day, and which shall not have been returned on or before that day, shall be returned as follows: If issued out of the court of chancery or supreme court, it shall be filed with the clerk of the court of appeals; and if issued out of any court of common pleas, it shall be filed with the clerk of the county of such court of common pleas.

Papers in special proceedings where to be filed.

§ 20. All papers and return in all cases of special proceedings before any justice of the supreme court or any county officer vested with jurisdiction in such proceedings, heretofore required to be filed with a clerk in the supreme court, may be filed with the clerk of the county in which the proceedings shall be had if they shall be before a county officer, and if before a justice of the supreme court, they shall be filed in a county where some of the parties reside, or in such other county as such justice shall, by order, direct.

Equity, jurisdiction of superior court and common pleas of New York.

§ 21. The superior court, and the court of common pleas of the city and county of New York, shall respectively have and possess the same equity jurisdiction which is conferred upon the several county courts of this state by the thirty-first section of said chapter, or by any other act.

1 N. Y., 231.

Power and jurisdiction of judges.

§ 22. Each judge of the said courts respectively, shall have and possess the same power and jurisdiction to hold special terms which may be appointed by said courts, to take testimony and to hear and determine suits and proceedings in equity in the several suits and proceedings in which jurisdiction is given by the last preceding section, as is given to the justices of the supreme court while holding a special term, by

the twentieth section of the said chapter, and may direct the hearing to be had at a general term of the court in the same manner as is therein provided, and a re-hearing may be applied for and ordered by the respective courts at a general term as is provided in said section.

1 N. Y., 231.

§ 23. Appeals from the orders and decrees of the said courts, respectively made at a general term, may be brought to the court of appeals in the same manner and under the same regulations and restrictions as appeals are brought from the supreme court to the said court of appeals.

Appeals from orders and decrees how made.

1 N. Y., 231.

§ 24. Section twenty-six of the said chapter is so amended as to read as follows: As many terms of the county court in each county, except the city and county of New York, shall be held at the court house in such county, or other usual place of now holding courts of common pleas or circuit courts, and at such times as the county judge shall by order appoint, which order shall be published in a newspaper printed in the county, once a week for three weeks successively; the county judge may change the day appointed for holding said terms, and may increase the number of terms or dispense with the holding of any such term by an order made and entered two months before such change or alteration takes effect, and immediately published as hereinafter provided, and the expense of such publication shall be a county charge.

Terms of county courts how appointed and when to be held.

§ 25. The twenty-seventh section of the said chapter is so amended as to read as follows:

Terms for trial of issues of fact.

The county judge in each county shall designate as many of said terms in each year for the trial of issues of fact by a jury, as there are now terms of the court of common pleas in such county fixed by law for the trial of issues of fact by a jury, which terms shall be designated in the order published as aforesaid, and shall be terms for the trial of issues of fact by a jury, and jurors shall be drawn and summoned therefor, and attend the same as now required for courts of common pleas. The terms so designated shall be held at the places where the courts of common pleas or circuit courts are now by law required to be held.

§ 26. No more grand jurors shall be summoned in any year after one thousand eight hundred and forty-seven, in any county, to attend the court of sessions therein, than were required to be summoned yearly to attend the court of general sessions of such county by the laws in force on the twelfth of May, one thousand eight hundred and forty-seven; and when, in any county, a grand jury shall not by law be required to attend every term of the court of sessions, the county judge shall direct which terms of such courts a grand jury shall attend, by an order to be made and published, as provided by the twenty-sixth section of the said chapter.

Grand jurors.

PART III.
Powers and
duties of
county
judges.

§ 27. Every county judge within the county in which he shall have been elected, shall have power, and it shall be his duty, to perform all such duties, and to do all such acts, when not holding a county court, as might have been done or performed by the laws in force on the twelfth of May, one thousand eight hundred and forty-seven, by the judges of the court of common pleas, or by any one or more of them, at chambers or otherwise, when not holding court, or by any such judge, being of the degree of counsellor of the supreme court and acting as a supreme court commissioner.

County
court may
order the
sale of any
real estate
of a relig-
ious cor-
poration.

§ 28. It shall be lawful for the county court of each county of this state, upon the application of any religious corporation, in case it shall be deemed proper, to make an order for the sale of any real estate belonging to such corporation, situate in the county where the application is made, and to direct the application of the moneys arising therefrom by the said corporation to such uses as the said corporation, with the consent and approbation of the county court, shall conceive to be most for the interest of the corporation in which the real estate so sold did belong; provided that this act shall not extend to any of the lands granted by this state for the support of the gospel.

Judgment
by default
when and
how en-
tered and
perfected.

§ 29. In all actions founded on contract in which a notice stating the nature of the demand, the amount for which judgment will be taken, and the time from which interest will be computed, shall be served with the process or declaration by which such action shall be commenced, and in which no issue of fact shall be joined, judgment may be entered for such amount, with interest, without executing any writ of inquiry or other assessment of damages.

Proof of
service of
papers.

§ 30. Proof by affidavit of the service of such notice, with a copy thereof, and a statement of the computation of interest upon such demand, shall be filed with the judgment record.

Jurisdic-
tion of
certain
causes or
matters
pending in
county
courts
transferred
to supreme
court.

§ 31. Whenever a cause or matter shall be pending in any county court, in which the judge of such court shall have been attorney, solicitor or counsel, or shall be interested, or in which he would be excluded from being a juror by reason of consanguinity or affinity to either of the parties, or in the decision of which he shall have taken part when sitting as a judge in any other court, it shall be his duty to make a certificate stating such fact, and file the same in the office of the clerk of such county court; and thereupon jurisdiction of such cause or matter shall be vested in the supreme court, in which such proceedings shall be had therein, according to the practice of such court, as might have been had in such county court if such cause or matter had remained therein.

District
attorneys to
exercise the
powers and
jurisdiction
of surro-
gates in cer-
tain cases.

§ 32. Whenever any surrogate of any county shall be precluded from acting as such in any case by reason of interest relationship, by consanguinity or affinity, to any party interested therein, so that he would be excluded from being a juror, or

by reason of being a witness to any will, or of having acted as counsel in any cause, and there shall be no local officer in such county to discharge the duties of such surrogate, or where such local officer shall also be incapable of acting as such surrogate by reason of the foregoing disabilities in the case of the surrogate, the county judge of such county, or in case of his disability for like cause, then the district attorney of such county shall possess the power and exercise the jurisdiction in all respects in such case as the surrogate of such county would be authorized to possess and exercise were it not for such disability.

§ 33. When the office of district attorney of any county shall be vacant at the term of any court of oyer and terminer, or court of sessions of any county, or the district attorney shall from any cause be unable to attend the term of any such court, the members of the court, except the justice of the supreme court, may designate some suitable person to act as district attorney at such term of the court; and the person so designated shall have and exercise the same powers and discharge the same duties as district attorneys elected in the manner provided by law, and shall be entitled to such compensation, to be paid out of the treasury of the county, as the board of supervisors shall allow.

Person to act as district attorney in cases of disability, &c. how and by whom designated.

§ 34. There shall be no designation of justices under the fortieth section of the said chapter, at the general election in the year one thousand eight hundred and forty-eight; such justices shall be designated as provided in the said section at every general election of members of assembly after the year one thousand eight hundred and forty-eight; every justice hereafter so designated shall be a member of the court of sessions for one year, commencing on the first day of January next after his designation; and no justice shall be so designated unless he shall be entitled to serve as a justice of the peace during such year by virtue of the election under which he shall be acting as such justice at the time of such designation.

When justice of the court of sessions to be designated.

23 N. Y., 296.

§ 35. The last paragraph of the fortieth section of the said chapter is so amended as to read as follows: Whenever at the time appointed for the commencement of any term of the court of oyer and terminer or at any term of the court of sessions, or at any time during any such term, if either of the said justices shall not attend such court as a member thereof; the county judge may, at such term, designate some other justice of the peace of the county to supply the vacancy occasioned by such non-attendance of any such justice until the justice not attending as aforesaid shall attend such court as a member thereof; but such designation by the county judge shall not authorize the justice designated by him to supply any such vacancy at any other term than that at which such designation shall be made.

County judge may designate justice of the sessions in certain cases.

PART III.
Seals of
county
courts.

§ 36. The seal required to be procured by any county clerk by the seventy-second section of the said chapter, shall be the seal of the county of such clerk, and shall be used by him in all cases where he is or shall be required to use an official seal.

Certain acts
declared
not appli-
cable to
county
clerks.
County
clerks to
make re-
turns.

§ 37. The second and subsequent section of chapter three hundred and eighty-eight of the laws of one thousand eight hundred and thirty-nine, and chapter three hundred and forty of the laws of one thousand eight hundred and forty, shall not apply to county clerks from and including the first Monday of July, one thousand eight hundred and forty-seven; but nothing in this section contained shall be deemed to exempt county clerks from keeping accounts of their fees and transmitting to the secretary of state statements thereof, as provided by chapter one hundred and twenty-five of the laws of one thousand eight hundred and forty-four; but every county clerk and the register of the city and county of New York shall keep an account of all their fees charged or received by them or which might be lawfully charged or received by them respectively, and shall file in the office of the said secretary, statements thereof, in the manner and at the time specified in the last mentioned chapter.

County
clerks not
to tax costs
in certain
cases.

§ 38. No county clerk shall tax costs in any case except where the amount thereof, exclusive of actual disbursements, which the party for whom they shall be taxed shall be entitled to recover, shall be limited by law; and the taxed bill of costs and all affidavits presented to the taxing officer on the taxation of such costs, shall be in all cases attached to and filed with the judgment record or enrolment.

Transcripts
of judg-
ments ren-
dered in
United
States
courts may
be dock-
eted by the
clerk of
county.

§ 39. Transcripts of judgments rendered in this state in any court of the United States, duly certified by the clerk of such court, may be filed and docketed by the clerk of any county in this state, in the same manner as judgments rendered in the supreme court of this state. And after the thirty-first day of January next, all judgments, decrees, and all transcripts of judgment and decrees, docketed in the office of any county clerk, shall be docketed in the same docket.

Surrogates,
clerks, &c.
to certify
transcripts
of records
and papers.

§ 40. It shall be the duty of every surrogate, of every county clerk, of the register of the city and county of New York, of the clerk of every court, and of every person having the custody of the records or papers in any public office, to search the files, papers, records and dockets in his office, to make transcripts from any such papers, records and dockets, and to certify to the correctness of such transcripts and searches, when required to do so, and on the payment or offer to pay the fees chargeable by law for such service; and every surrogate, clerk, register or other officer who shall neglect or refuse to make such search, transcript or certificate as aforesaid, when he shall be so required and the fees therefor shall be

paid or offered to be paid, shall be deemed guilty of a misdemeanor.

31 B., 520.

§ 41. In all cases or proceedings in law or equity in the supreme court or county courts, the parties to the suit or proceeding, or their attorneys or solicitors, by consent of the justice or judge who shall try the cause, may, in writing, stipulate to hear, try and determine such cause or proceeding elsewhere than at the court house of the county where the same shall be pending. Such stipulation shall specify the place of trial or hearing and shall be filed in the office of the clerk of the court in which the cause or proceeding shall be pending; and such trial or hearing shall be brought on upon notice as in other cases, unless the time thereof shall be fixed by such stipulation.

Parties may stipulate to try causes at places other than the court-houses.

§ 42. It shall be the duty of every sheriff, deputy sheriff and constable attending any court in this state, where the services of a crier shall be required, to act as such crier, and no fees or compensation shall hereafter be allowed to any officer or other person for acting as crier of any court in this state; and the office of crier, except as provided by this section, is hereby abolished.

Duty of sheriffs and constables to act as criers

§ 43. Whenever no time shall be prescribed by law at or within which any writ or process shall be made returnable, it shall be returnable at or within the time therein specified for that purpose.

Process returnable.

§ 44. The term "year," wherever it is used in the ninth, nineteenth, twentieth and twenty-first sections of the said chapter two hundred and eighty of the laws of one thousand eight hundred and forty-seven, shall be deemed to mean the period of one year, terminating on every thirty-first day of December, after one thousand eight hundred and forty-seven; and the term "two years," when used in the said ninth and nineteenth sections, shall be deemed to mean the period of two years, terminating on the thirty-first day of December, in every second year, after one thousand eight hundred and forty-seven.

The term "year" defined.

§ 45. The fifth sub-division of the fourth section of the fourth title of the second chapter of the third part of the Revised Statutes is hereby amended by striking out of the same the words "or against corporations;" and the process by which any suit shall be commenced before a justice of the peace against a corporation may be served on the presiding officer, secretary, cashier, treasurer, or any director or trustee thereof by whatever name such director or trustees may be called.

Corporations may be sued before justices of the peace. Process how served.

§ 46. Any person of good moral character, although not admitted as an attorney, may manage, prosecute or defend a suit for any other person, provided he is specially authorized

Who may prosecute and defend suits.

PART III.

for that purpose by the party for whom he appears, in writing or by personal nomination in open court.

3 B., 197.

Costs of
suit may be
recovered.

§ 47. Whoever shall in person prosecute or defend any suit or proceeding in any court or before any officer, shall recover the same fees for any services performed therein, which he would be entitled to recover if such services had been performed by an attorney, solicitor or counsellor; and all the provisions of law in relation to the buying of any claim with a view to prosecute the same, or to the lending or advancing money in consideration of a claim being placed in his hands for collection, by any attorney, solicitor or counsellor, shall apply to every case of such buying a claim, or lending or advancing money, by any person prosecuting a suit or proceeding in person.

County
judge can-
not practice
in any court
of which he
is a mem-
ber.

§ 48. No county judge shall practice or act as an attorney, solicitor or counsellor, in any court of which he shall be, or shall be entitled to act as a member; nor shall any partner of, or person connected in law business with any such judge, practice or act as an attorney, solicitor or counsellor, in any court of which such judge shall be or shall be entitled to act as a member, or in any cause or proceeding originating in such court; nor shall any such judge practice or act as a counsellor in any cause or proceeding which shall have originated in a court of which he shall be or shall be entitled to act as a member.

Judges of
superior
court and
court of
common
pleas in
New York
cannot
practice as
attorneys,
&c.
Recorders
cannot
practice,
&c.

§ 49. No judge of the superior court of the city and county of New York, and no judge of the court of common pleas for the said city and county, shall practice or act as an attorney, solicitor or counsellor in any court.

§ 50. No recorder shall practice as an attorney, solicitor or counsellor in any court of which he shall be or shall be entitled to act as a member, or in any cause or proceeding originating in any such court; nor shall any partner of or person connected in law business with any recorder, practice as an attorney, solicitor or counsellor in any court of which such recorder shall be or shall be entitled to act as a member, or in any cause or proceeding originating in any such court.

Surrogates
cannot
practice,
&c.

§ 51. No surrogate shall practice or act as an attorney, counsellor or solicitor in his court, nor in any cause originating in such court; nor shall any partner of or person connected in law business with any surrogate, practice or act as attorney, solicitor or counsellor in any cause or proceeding before such surrogate, or originating before such surrogate.

The partner
or clerk of
a county
judge &c.
cannot act
as attorney,
&c. before
him.

§ 52. No partner or clerk of any judge or officer shall practice before him, as attorney, solicitor or counsel in any cause or proceeding whatever, or be employed in any suit or proceeding which shall originate before such judge or officer; nor shall any judge or officer act as attorney, solicitor or counsel-

lor in any suit or proceeding which shall have been before him in his official character.

8 B., 355.

§ 53. No constable who shall have been employed to act, or who shall have acted as attorney or agent in respect to any claim or matter in controversy, shall summon any jury in any justices' court, which shall be summoned to try any question in relation to any such claim or matter.

When constables cannot summon a jury.

CHAP. 32.

AN ACT to amend an act entitled "An act authorising courts of equity to order the sale of rights of pre-emption to real estate, or chattels real, in certain cases," passed November 22d, 1847.

PASSED February 10, 1848.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 2. The second section of said act is hereby amended so as to require the six months' notice therein provided for, in case of non-residents, to be published for three months successively twice in each week, in two of the daily papers published in the city of New York; still requiring, however, that six months shall expire after the first publication of the said notice, before the application to the court in said act referred to.

Notice how long to be published.

CHAP. 222.

AN ACT to amend the third section of the act passed December 14, 1847, entitled "An act to amend the act entitled an act in relation to the judiciary," passed May 12, 1847.

PASSED April 11, 1848.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. The last paragraph of the third section of the act passed December 14, 1847, entitled "An act to amend the act, entitled an act in relation to the Judiciary," passed May 12, 1847, is hereby repealed, so that hereafter in all cases, writs of error issued either to the superior court or to the court of common pleas of the city of New York, shall be issued from the court of appeals.

Writs of error.

CHAP. 224.

AN ACT to provide for the publication of the reports of the court of appeals.

PASSED April 11, 1848; "three-fifths being present."

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. The seventy-third section of the act entitled "An act in relation to the judiciary," passed May 12, 1847, is hereby amended so as to read as follows:

State reporter to be appointed.

Judges to furnish him with written opinions.

§ 73. There shall be a reporter of the decisions of the court of appeals, to be denominated "State Reporter," who shall be appointed by the governor, lieutenant-governor, and attorney-general, and hold his office three years from the date of his appointment; but may be removed, by the concurrent vote of both branches of the legislature. It shall be his duty to report every cause argued and determined in that court, which it shall direct him to report, and such others as the public interest shall in his judgment require. To enable him to perform this duty, the judges of that court shall deliver to him such written opinions as they shall prepare upon questions of law. Every decision of the said court which shall be reported, shall be so reported as soon after the same is made as practicable; and if the reporter shall neglect faithfully to perform his duty, it shall be duty of the said court to report that fact to the legislature, to the end that he may be removed from office.

Reports how and on what terms to be published and sold.

§ 2. The reporter shall have no pecuniary interest in such reports, but the same shall be published under the supervision of the reporter, by contract to be entered into by the reporter, secretary of state and comptroller, with the person or persons who, in addition to furnishing the said secretary of state sixty-four copies of each volume, shall agree to publish and sell the said reports on terms the most advantageous to the public, and at a rate not exceeding the price of three dollars for a volume of five hundred pages; regard being had to the proper execution of the work. And before entering into said contract, it shall be the duty of the said reporter, secretary of state, and comptroller, to receive and consider all proposals for the publication of said reports, which may be made to them.

Copyright not to be secured.

§ 3. It shall not be lawful for the reporter or any other person within this state, to secure or obtain any copy-right for said reports, notes or references, but the same may be published by any person.

See Laws of 1850, ch. 245.

Half volume may be published in pamphlet.

§ 4. As often as the reporter shall have prepared for publication sufficient of the reports, with notes and references, to

constitute two hundred and fifty pages, of the usual size of law reports, he shall cause the same to be published in pamphlet form, with such headings as will appear in the bound volumes, and shall furnish a copy thereof to each county clerk's office, at the expense of the state, and keep the same on sale at contract prices for all persons who may want to purchase; such printing to be done by the person who shall contract to publish the reports under this act, at and in proportion to the prices stipulated in his contract.

CHAP. 277.

AN ACT in respect to the funds and securities in possession of the clerk of the court of appeals.

PASSED April 12, 1848; "three-fifths being present."

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. Within one year after this act shall take effect as a law, the clerk of the court of appeals shall deliver and transmit every bond and mortgage or other conveyance of or security upon real estate in his possession to the county treasurer of the county in which the mortgaged premises or real estate described in such mortgage or conveyance is situated, (except the bonds and mortgages which are executed upon lands situated in the city of New York,) together with a transcript from the books of account in his office of all entries relating to such bonds and mortgages or other conveyances or securities respectively, with as full and particular an account of each of such securities, and of all moneys received thereon, and of the payment, investment or deposit thereof as the same appear in such books of account, together with all deeds, vouchers, receipts or other papers relating thereto in his possession, except those in the next section specified; and all moneys hereafter required to be brought into court by the supreme court or any county court, shall be paid to such county treasurer as the court shall direct by order or by general rule, and all bonds, mortgages and other securities upon real estate now required to be taken in the name of the clerk of the court of appeals, shall, except so far as is otherwise provided in this act, hereafter be taken to the county treasurer of the county where such real estate is situated, in his name of office, (except in the city of New York), or such other county treasurer as the court shall direct; and all bonds, mortgages and other securities upon real estate situated in the city of New York now required to be taken in the name of the clerk of the court of appeals shall hereafter be taken in the name of the chamberlain of said city; and all other securities and all certificates and transfers of stocks, shall be taken in the name of office of such county treasurer or of the chamberlain of said city;

Clerk of the court of appeals to deliver bonds, &c. to county treasurers.

PART III.

Also petitions, orders, &c. from the files of the court of chancery.

Bonds, mortgages, &c. in New York to be delivered to chamberlain.

Titles vested in county treasurers and chamberlain of New York.

but nothing herein contained shall prevent any such courts on the application of the parties in any suit or proceeding from directing in what manner or place such funds shall be deposited or invested as the court shall decide.

§ 2. Within the same period aforesaid, the clerk of the court of appeals shall also take from the files of the late court of chancery in his office, all petitions, orders, decrees, reports and accounts of guardians, receivers, and of committees of the person and estate of lunatics, and habitual drunkards, connected with or relating to the bonds and mortgages or other vouchers or securities, or accounts in the preceding section mentioned, and deliver or transmit the same to the clerk of the same county of this state, or to the county treasurer of which he is above required to send the bonds and mortgages or other vouchers or securities mentioned in the foregoing section of this act, and in pursuance thereof.

§ 3. All bonds and mortgages, and other securities upon real estate situated in the city of New York, shall in like manner, and within the same time above mentioned, be delivered or transmitted to the chamberlain of the city and county of New York, together with all other securities, stocks, certificates of stock or deposit, with all books of account, vouchers, receipts or other papers relating to such securities in his possession, received from the late assistant register of the court of chancery, and clerk in chancery of the first circuit, and also all books of account relating to such securities kept by him since the first Monday of July last.

§ 4. The several county treasurers of this state, and the chamberlain of the city and county of New York, to whom the bonds and mortgages and other securities, accounts, deeds, vouchers, receipts and other papers aforesaid, are required to be sent as aforesaid, or in whose name any bond, mortgage or other security is required to be taken, shall from the time of the receipt or taking of such bonds and mortgages, or other securities, accounts, deeds, vouchers, receipts, or other papers, be vested with the full and complete title thereto, in as full and ample a manner as such title is now vested in the clerk of the court of appeals, and may sue for and collect the same in their names of office respectively, in the same manner and to the same effect as the said clerk of the said court of appeals may now do; and all the provisions of law conferring any power or authority over such securities upon the said clerk, or directing the manner of receiving, safe keeping, depositing, investing or paying out the moneys arising from such securities, or now in deposit in any bank, arising therefrom, and in regard to the investment, safe keeping or transfer of any stocks, moneys, or securities brought into court, shall be deemed to apply to such county treasurer, and to the said chamberlain of the city of New York, respectively; and also all the provisions of the Revised Statutes prescribing the fees of the register and assistant register of the court of chancery

for the services rendered by them in respect to such securities or moneys, shall likewise apply to such county treasurer and chamberlain of the city of New York, respectively.

Provision
respecting
moneys in
New York
Life Insu-
rance and
trust com-
pany.

§ 5. All moneys deposited in the New York Life Insurance and Trust Company, or in any bank or savings bank in the name of the clerk of the court of appeals, or in his hands uninvested, when this act shall take effect, shall be and the same is hereby vested in the county treasurers or chamberlain of the city and county of New York respectively, to whom the bonds and mortgages, and other securities in the first section of this act mentioned, from which moneys have been derived, or on which they have been paid, are required to be delivered as therein specified, or to whom the securities from or upon which such moneys have been derived or paid, would be required by said section to be delivered if now in the hands of said clerk of the court of appeals, so far as the clerk of said court of appeals can ascertain the same; and where he cannot, he shall transfer such moneys to the treasurers of the respective counties where the persons beneficially interested therein resided at the time of the deposit thereof, or now reside; and so far as the said clerk shall be unable to determine to what counties such moneys belong, as herein provided, they shall remain in his hands as at present, and also all moneys, funds and securities belonging to the unknown owners; and the said clerk, at the same time when he delivers the bonds and mortgages, and other securities to the county treasurers, as specified in the first section of this act, shall also transmit to each county treasurer a statement of the moneys so in deposit as aforesaid, which will vest in each of the said county treasurers by virtue of this section, containing a particular account of the amount of such deposit, when, by whom, and for whom made, where the same are deposited, and in what suit, or to what account the same was deposited, so far as the same appears on the books in his office; and the said clerk of the court of appeals shall report to the legislature at the next annual session thereof, a full and detailed statement of the moneys, books, conveyances, securities or other papers, transferred or retained by him, to the several county treasurers and chamberlain of the city and county of New York, specifying to whom delivered, at what time, and such other particulars as may be necessary to exhibit as full and perfect exhibit of the funds and securities hereby transferred as the books and papers in his possession will enable him to make, and also the names of persons who are recognized as unknown owners.

§ 6. Every county treasurer shall at each annual session of the board of supervisors of the county in which he resides, report a statement of all the bonds and mortgages and other securities and moneys received and held by him under the provisions of this act, stating the amount of such securities respectively and the persons interested therein, and the board

County
treasurers
to report to
boards of
supervisors

PART III.

of supervisors may require such treasurer to increase the amount of his bail. And it shall be the duty of said board of supervisors to examine into the situation of the securities and money in the hands of such treasurers and to ascertain whether such moneys are safely and securely kept, deposited or invested, and such securities adequate and safe.

Books of
account,
&c. to be
delivered
to certain
county
clerks.

§ 7. The clerk of the court of appeals shall deliver to the county clerk of the county of Dutchess all the original books of account, bank books and other vouchers, and other papers containing entries in relation to the moneys and securities which he received from the former clerk of the second judicial district; in the like manner he shall deliver to the clerk of Albany county all such books of accounts and bank books received by him from the register in chancery and the clerk of the third district; to the clerk of the county of Saratoga, all such books received from the clerk in chancery of the fourth district; to the clerk of Oneida county, all such books received by him from the clerk of the fifth district; to the county clerk of Chenango county, all such books received from the clerk of the sixth district; to the clerk of Cayuga county, all such books received from the clerk of the seventh district; and to the clerk of Monroe county, all such books received from the clerk of the eighth district.

Supreme
court may
order trans-
fers to be
made.

§ 8. The supreme court shall have power to order any bond, mortgage, stocks, securities or moneys in the possession or under the control of any county treasurer, to be transferred and delivered to any general or special guardian or committee, upon the giving of such real or personal security by such guardian or committee for the faithful execution of their trust as shall be satisfactory to said court; and said court shall also have power to order any bond, mortgage or other securities hereafter taken, to be taken by and in the name of any guardian, committee or other trustee, to be collected and invested as such court shall by special order or general rule direct. Such guardian or committee shall annually file a report in the county clerk's office in the county in which the property is situated.

Expenses
to be paid.

§ 9. Such expenses as shall be incurred by the clerk of the court of appeals for extra clerk hire, not exceeding the compensation of one extra clerk, or otherwise, in the execution of this act, shall be credited and allowed by the comptroller, and paid out of any funds applicable to such purpose.

Amount to
be paid
into state
treasury.

§ 10. The sum of thirty-five thousand one hundred and eighty-one dollars and fifty cents, now in the hands of the clerk of the court of appeals shall be paid into the state treasury.

Interest
how paid.

§ 11. This act shall not prevent the payment of interest by the clerk of the court of appeals to such persons as may be entitled thereto, till such time as the funds and securities herein mentioned are distributed as herein provided.

§ 12. All the provisions of the act entitled "An act in relation to the judiciary," passed May 12, 1847, inconsistent with the provisions of this act are hereby repealed.

CHAP. 357.

AN ACT providing for compensation to the County Treasurers of this State, for services rendered by them under the act of April 12, 1848, relating to funds and securities in possession of the Clerk of the Court of Appeals.

PASSED April 11, 1849; "three-fifths being present."

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. The several county treasurers in this state shall be entitled to receive for the services rendered by them in regard to the securities and moneys received and held by them respectively under the provisions of the act entitled "An act in respect to the funds and securities in possession of the clerk of the court of appeals," passed April 12, 1848, in lieu of the compensation provided by said act, a commission of one-half of one per cent. on every dollar which they shall receive, and one-half of one per cent. on every dollar which they shall pay out, of the moneys so received and held by them by virtue of said act.

Allowance
to treasurers.

CHAP. 128.

AN ACT to provide for the speedy disposition of certain suits.

PASSED April 1, 1850.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. Every issue of fact joined or hereafter to be joined in any action brought by the attorney general of this state, pursuant to the joint resolution of the senate and assembly of the tenth day of April, one thousand eight hundred and forty-eight, or proceedings in the nature of a quo warranto, shall have a preference at the court at which it shall be noticed for trial, over all other causes; and every case made, special verdict rendered, and bill of exceptions taken on such trial, and every issue of law joined on the pleadings in such suit or proceedings, and every appeal from any judgment rendered in any such suit or proceedings, shall have a preference in the argument thereof, in any court where the same may be pending.

Suits by
attorney
general to
have precedence.

CHAP. 245.

AN ACT to amend the "Act to provide for the publication of the reports of the court of appeals," passed April 11, 1848.

PASSED April 9, 1850.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. The third section of the "act to provide for the publication of the reports of the court of appeals," passed April 11, 1848, is hereby amended to read as follows:

Reporter
not to have
copyright
of judicial
decisions.

§ 3. It shall not be lawful for the reporter or any other person within this state to secure or obtain any copyright for said reports of the judicial decisions of the court of appeals, but the same may be published by any person.

Copyright
of notes
and refer-
ences
vested in
secretary of
state.

§ 2. The copyright of any notes or reference made by the state reporter to any of said reports shall be vested in the secretary of state for the benefit of the people of this state.

CHAP. 511.

AN ACT to facilitate the service of process in certain cases.

PASSED June 30, 1853.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Process
how to be
served.

§ 1. Whenever it shall satisfactorily appear, to any court, or any judge of the supreme court, or any county judge, by the return or affidavit of any sheriff, deputy sheriff, or constable authorized to serve or execute any process or paper for the commencement, or in the prosecution, of any action or proceeding, that proper and diligent effort has been made to serve any such process or paper on any defendant in any such action, residing in this state, and that such defendant cannot be found, or if found, avoids or evades such service, so that the same cannot be made personally, by such proper diligence and effort, such court or judge, may, by order, direct the service of any summons, subpoena, order, notice or other process or paper to be made by leaving a copy thereof at the residence of the person to be served, with some person of proper age, if admittance can be obtained, and such proper person found, who will receive the same, and if admittance cannot be obtained, or any such proper person found, who will receive the same, by affixing the same to the outer or other door of said residence, and by putting another copy thereof, properly folded or enveloped, and directed to the

person to be served, at his place of residence, into the post office in the town or city where such defendant resides, and paying the postage thereon. On filing with the clerk of the county where such defendant resides, or the county in which the complaint in any such action is by law to be filed, an affidavit showing service according to such order, such summons, subpoena, order, notice, or other process or paper, shall be deemed served, and the same proceedings may be taken thereon as if the same had been served by delivery to such defendant personally or otherwise, as by law now required; but the court may, upon any application by them deemed reasonable, at any time, permit any defendant to appear and defend, or have such other relief, in any action or proceeding founded on any such service, as the nature of the case may require.

16 N. Y., 244; 32 B., 649.

CHAP. 648.

AN ACT in relation to surrogates' courts held by county judges and other officers.

PASSED July 21, 1853.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. In those counties in which the county judge is also surrogate, he may be named and designated simply as surrogate, without any addition referring to his office as county judge; and in those counties where the surrogate is a distinct officer, the county judge or other officer, when acting as surrogate, shall be designated by his official title, with the addition of the words, "and acting surrogate."

CHAP. 202.

AN ACT to extend the provisions of the Code of Procedure to forfeited recognizances.

PASSED April 9, 1855.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. All the provisions of the Code of Procedure are hereby applied to all recognizances forfeited in any court of general session of the peace, or of oyer and terminer, in any of the counties of this state. Code extended.

§ 2. All laws or parts of laws, or provisions of statutes, in anywise conflicting with such application of the provisions of the Code of Procedure to the said forfeited recognizances, are hereby repealed. Repeal.

PART III.
Costs.

§ 3. In no case whatsoever, upon proceedings upon forfeited recognizances, shall any fees or costs whatsoever be chargeable to the mayor, commonalty, aldermen, or supervisors of the city and county of New York, by the officer prosecuting the same.

CHAP. 567.

AN ACT to prohibit clerks of the courts in this state from practising as attorneys and counsel in their respective courts.

PASSED April 15, 1857.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Prohibited
from prac-
ticing.

§ 1. No clerk or deputy clerk of any court in this state shall be permitted to practice as attorney or counsel in any court of which he shall be such clerk or deputy clerk.

CHAP. 37.

AN ACT to facilitate the progress of civil actions, in which the people of the state are parties.

PASSED March 20, 1858.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Preference
to cases of
the people.

§ 1. Any civil action or proceeding in which the people of this state are a party, and when the attorney-general shall be the attorney on record, shall have a preference in all the courts of this state, and may be moved, on the part of the people, out of its order on the calendar; but such preference shall not be had, unless the attorney for the state shall give notice, at the time of service of notice of trial or argument of the day on which he shall move the trial or hearing of the action; and in case the same shall not be moved by the attorney for the state on such day, the defendant shall have the right to move the trial or argument of the action, and the trial or argument shall not be moved out of its order on any other day than the day specified in such notice, unless the court shall otherwise direct.

Appeals in
suits of the
people.

§ 2. An appeal may be brought by the people of this state or any state officer or board of state officers, from any judgment or order against them in any court, without any undertaking or security whatever, and such appeals now pending, or that shall hereafter be brought shall operate as a stay of proceedings on the judgment or order appealed from.

As amended by Laws of 1861, ch. 288.

CHAP. 176.

AN ACT to provide for additional compensation to Jurors in attendance upon Courts of Record in Rensselaer, Westchester, St. Lawrence, Queens, Niagara, Ulster and Livingston counties.

PASSED April 13, 1858; three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. The board of supervisors of the counties of Rensselaer, Westchester, St. Lawrence, Queens, Niagara, Ulster and Livingston counties may, at their first, or any subsequent meeting, after the passage of this act, direct a sum, not exceeding one dollar and fifty cents per day, to be allowed to every grand and petit juror for attending the courts of record held within such counties, in addition to any other fees which such jurors may receive, and they may also direct an allowance to be made to such jurors for traveling in coming to and returning from such courts, not exceeding three cents per mile. The money so compensating jurors shall be raised in the same manner as other county charges are by law to be raised and collected.

Pay to Jurors.

See Laws of 1860, ch. 136.

CHAP. 386.

AN ACT requiring county treasurers to file in the county clerk's office a report of the moneys and securities in their hands belonging to infants.

PASSED April 16, 1859.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. The county treasurer of every county in this state shall, within ten days after the first day of July of each and every year, make and file in the county clerk's office of the county in which he resides, a report, which shall contain a statement of all moneys or securities in his hands belonging to infants or to other persons; for whom invested; how invested, with a particular description of the securities belonging to each infant, containing a statement of the amount due thereon for principal and of the amount due thereon for interest, with a particular statement of his account as to each infant, up to the first day of July preceding the date of said report; the amount of fees charged by him; the amount in his hands invested and uninvested, and to whom the same belong; and if he has in his hands any moneys not invested.

County treasurers to file report in county clerk's office.

PART III.

the said report shall state the amount thereof; the length of time the same has been in his hands uninvested and the reasons why the same has not been invested; the said report shall also state whether the moneys in his hands uninvested is for principal or interest, and the length of time any principal sum shall have remained in his hands uninvested during the year preceding the date of said report; which report shall be verified by the oath of the county treasurer to be in all respects true.

Official
bond made
applicable.

§ 2. The official bonds of any county treasurer executed after the passage of this act, shall be held to apply to all the moneys and securities mentioned in the first section of this act, and the supervisors of any county may require such new or additional security at any time for the safe keeping and application of such moneys and securities as they may deem proper. In case any county treasurer shall neglect to file his report as required in the first section of this act, he shall forfeit the sum of five hundred dollars to the people of the state of New York, for the use of the poor of the county.

Time for
making and
filing re-
port may be
extended.

§ 3. The time for the making and filing of the report required by the first section of this act may be extended twenty days, by a justice of the supreme court, upon good cause shown, but no order shall be made enlarging the time for the filing of such report unless notice of the application for such order shall have been served upon the district attorney of the county, and proof of such service furnished to the justice making the order; and no order enlarging the time for the making of such report shall be of any force or effect until the order shall have been entered on the book kept for the entry of orders made by the supreme court and the original order, signed by the justice, with the papers upon which the same was granted, shall have been filed in the clerk's office of the county.

County
treasurer to
file report.

§ 4. In case the county treasurer shall not file his report as specified in this act, it shall be the duty of the district attorney of the county to bring an action in any court having cognizance thereof, in the name of the people of the state of New York, against such county treasurer, to recover the penalty provided for in the second section of this act.

CHAP. 136.

AN ACT in relation to the fees of grand and petit jurors.

PASSED March 31, 1860; "three-fifths being present."

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Chapter 176
of laws of
1858, amen-
ded

§ 1. The first section of chapter one hundred and seventy-six of the Laws of eighteen hundred and fifty-eight, is hereby amended so as to read as follows:

§ 1. The several boards of supervisors in this state, except the county of Kings, may at their first or any subsequent meeting after the passage of this act, direct a sum, not exceeding one dollar and fifty cents a day, to be allowed to every grand and petit juror for attending the courts of record held within the several counties, in addition to other fees which such jurors may receive; and they may also direct an allowance to be made to such jurors for traveling in coming to and returning from such courts, not exceeding five cents a mile. Such money shall be raised in the same manner as other county charges are by law raised and collected.

CHAP. 43.

AN ACT to authorize attorneys of the Supreme Court of this State residing in adjoining States, to practice in the Courts of this State.

PASSED March 22, 1862.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. Any regularly admitted and licensed attorney of the Supreme Court of this State, and whose only office for the transaction of law business is within this state, may practice as such attorney in any of the courts of this State notwithstanding he may reside in a state adjoining the state of New York, provided that this act shall extend only to attorneys who have been heretofore admitted to practice in the Courts of this State, and who reside out of the State of New York, and that service of papers which might according to the practice of the Courts of this State, be made upon said attorney at his residence, if the same were within the state of New York, shall be sufficient if made upon him by depositing the same in the post office in the city or town wherein his said office is located, directed to said attorney at his office, and paying the postage thereon; and such service shall be equivalent to personal service at the office of such attorney.

To extend only to attorneys heretofore admitted to practice in this state.

CHAP. 451.

AN ACT to establish a tribunal of conciliation in the sixth judicial district.

PASSED April 23, 1862; three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. A tribunal of conciliation is hereby established in the sixth judicial district of this state.

Court established.

PART III.

Judge to be appointed.

§ 2. Such tribunal shall be held by one judge, to be appointed by the governor, with the advice and consent of the senate, and as often thereafter as may be necessary, who shall hold his office for three years, and until another is appointed in his place.

Jurisdiction.

§ 3. Said tribunal shall, within the sixth judicial district of this state, possess like powers and exercise the jurisdiction of the supreme court of this state, and all laws now in force in reference to said supreme court, to special proceedings and the trial of actions in said court, to its orders, judgments and executions, and the enforcement thereof, and of proceedings supplemental to executions and lien of judgments upon real property, to the clerks, attorneys, counsellors and officers thereof and practice therein, and the power to regulate the same by rules or otherwise, and to appeals to the supreme court at general term thereof, shall be applicable to said tribunal, to special proceedings, and the trial of actions in said tribunal, to its orders, judgments and executions, and the enforcement thereof, to proceedings supplemental to executions and the lien of judgments upon real property, to the clerk, attorneys, counsellors and officers thereof, their qualifications, powers and rights, and to the practice of said tribunal, and the power to regulate the same by rules or otherwise, and to appeals to the general term of the supreme court, so far as the same can be applied, except as hereinafter provided; but said tribunal shall have no power to render judgment to be obligatory on the parties except they voluntarily submit their matters in difference and agree to abide the judgment or assent thereto, in the presence of such tribunal, and shall have no power to interfere in any matter, action or proceeding pending in the supreme court. But actions pending in the supreme court may be transferred to said tribunal by consent of the parties.

Exception.

Transfer of actions.

Mode of submitting matters in difference regulated.

§ 4. Any person, whether claiming or resisting a demand of any kind, may cause to be personally served by copy upon the other party or parties a written proposal, subscribed by him or his attorney, briefly stating their matters in difference as he claims them to be, and agreeing on his part to submit the same to and abide the judgment thereon of such tribunal, and requesting such other party or parties to do the same; and such party or parties so served with such proposal may thereupon, within thirty days thereafter, serve upon the party or his attorney from whom said proposal emanated, either personally or by depositing the same in the post office to his address, a notice signifying his or their acceptance of such proposal, and on filing such proposal and notice of acceptance, or copies thereof, with the clerk of said tribunal, said parties shall be deemed to have voluntarily submitted to such tribunal their matters in difference referred to in said proposal, and to have agreed to abide the judgment; and said tribunal shall have jurisdiction thereof, and to hear, try and render judg-

ment, which shall be obligatory upon the parties. The issue or issues, if any, so to be tried upon the matters indicated in said proposal shall, after the filing of said proposal and acceptance, be settled between the parties in such manner and form as shall be prescribed by the rules and regulations of such tribunal. Said tribunal shall, also, without the service of the proposal aforesaid, have like jurisdiction as aforesaid, when the parties shall have filed with the clerk thereof a written submission of their matters in difference, agreeing to abide the judgment of said tribunal; subscribed by the said parties, or oral assent thereto given by them in the presence of such tribunal.

§ 5. Every judgment rendered by said tribunal and docketed in the clerk's office thereof, shall become a lien on the real property of every person against whom such judgment shall have been rendered, by the filing of a transcript thereof, certified by the clerk of said tribunal and the docketing thereof in the clerk's office of the county where such real property may be situated; and at any time within five years after the docketing of said judgment in said tribunal, an execution for the enforcement thereof may be issued by the clerk of such county, and such execution, and the issuing, return, and satisfaction thereof shall be subject to the control of the supreme court according to the practice of said court on executions upon judgments therein, except that in said judicial district the enforcement of judgments by execution or otherwise shall be conducted and controlled by said tribunal, and executions shall be issued therefrom, and levied, collected and executed according to the laws in relation to executions issued upon judgments in said supreme court.

Effect of judgment.

Execution.

§ 6. Said tribunal shall have a seal, and shall be deemed a court of record, and all laws in relation to courts of record and their powers and duties as such, shall be applicable to such tribunal so far as the same can be applied.

Tribunal to have a seal.

§ 7. Said tribunal may hold sessions and conduct trials before it at such times and places in the county of Delaware as it may from time to time by its rules or by order direct; and such order shall in each case locate the trial in the town where the majority of the witnesses reside and where the interests of the parties may require that such trial shall be held unless in the opinion of the judge there shall be paramount reasons for holding the same in some other town; but at least two regular terms of such tribunal shall be held in each year in the village of Deposit, in said county of Delaware, at such times and places therein as said judge shall direct, or as shall be specified by the rules of said tribunal. The clerk's office of said tribunal and the residence of the judge thereof, after his appointment, shall be in said village, and if his residence shall be elsewhere for six consecutive months he shall be deemed to have vacated his office.

Terms of court and places of holding same.

PART III.
Supervisors
to appoint
clerk of
court and
two arbitra-
tors to sit
with the
judges.

Vacancies.

Notice for
arbitrators
to attend.

When
judge to
appoint
arbitrator.

Powers of
judge.

Appeals
may be had
to general
term of
supreme
court.

Prohibition

Costs.

§ 8. The board of supervisors of the county of Delaware shall at their next annual meeting after the passage of this act, and every three years thereafter, appoint a clerk of said court, and also two arbitrators, whose duty it shall be, whenever notified by the clerk of the said tribunal, to attend the terms thereof, and to assist the judge in the trial of all issues of fact when so requested by either or the parties to such trial, which clerk and arbitrators shall hold their offices for three years, and until their respective successors shall be appointed. Vacancies in said offices or either of them may be filled by said board of supervisors at any meeting thereof. And in case there shall be a vacancy in either of said offices when the board of supervisors is not in session the same may be filled by said judge by his appointment of some suitable person to be such clerk or arbitrator, as the case may be, who shall hold his office until such vacancy shall be filled by said board of supervisors.

§ 9. Any party to an issue of fact to be tried in said county of Delaware before such tribunal, may, at least ten days before such trial, notify the clerk thereof, in writing, that he desires the arbitrators to be present at such trial to participate therein. Such clerk shall thereupon notify said arbitrators by personal service of a notice, or by addressing the same to each of them at his place of residence through the post office, stating that their attendance at the time and place of such trial is desired. And on such trial said arbitrators and judge shall each have an equal voice, and the decision of a majority shall be the decision of such tribunal. If, for any cause, either of said arbitrators shall fail to be present at such trial, then said judge may appoint some suitable person to supply his place for the purposes of such trial.

§ 10. The judge of the tribunal established by this act, may make orders and exercise, within said sixth judicial district, the powers of a justice of the supreme court, out of court and at chambers, according to the existing practice, except to stay proceedings in said supreme court after verdict.

§ 11. Appeals may be taken to the general term of the supreme court from the orders of said judge, and the judgments of said tribunal upon the law and upon the facts in like cases and conducted and disposed of in like manner, as provided by law for appeals to said general term; and the provisions of sections two hundred and sixty-seven and two hundred and sixty-eight of chapter four of title eight of the amended Code of Procedure, and of chapters three and four of said title, shall be specially applicable to such appeals so far as the same can be applied. But no appeal shall be taken to the court of appeals in any case where the action or proceeding originated in said tribunal.

§ 12. Said tribunal shall, in all actions, matters and proceedings therein, have discretion and control over the amount

of costs and questions between the parties in relation thereto, and shall have the right to allow or disallow costs to either party or to any of the parties; but shall have no power to allow or impose more costs than are now allowed by law in the supreme court.

§ 13. Said judge shall serve as sole referee in any action or proceeding in the supreme court, in said sixth judicial district when he shall be appointed pursuant to the provisions of law for the appointment of referees in such court, and such court may appoint him to act as such referee in any county of said district the same as if he were a resident of such county; and in case neither of the parties shall be required to pay him any compensation or fees as such referee, except his expenses.

Judge may
serve as
referee.

§ 14. Said arbitrators and clerk shall each receive a reasonable salary or compensation for his service as such arbitrator or clerk, to be audited and allowed by the board of supervisors of said county of Delaware, and paid by said county; and all necessary expenses for the organization and maintenance of said tribunal shall be paid by said county. Said judge shall receive an annual salary of fifteen hundred dollars to be paid from the state treasury in the same manner that the salaries of justices of the supreme court are paid.

Salary of
arbitrators
and clerk.

Salary of
judge.

§ 15. All the provisions of this act in reference to arbitrators in the county of Delaware, shall be applicable to every other county in said judicial district, whenever the board of supervisors thereof shall appoint arbitrators for said tribunal in pursuance of the right to do so, which is hereby conferred upon them; and thereafter said tribunal shall hold sessions and conduct trials in every such county in the same manner as in said county of Delaware. Said judge may in his discretion appoint and hold terms and trials by said tribunal without the aid of arbitrators in any county in said district where no arbitrators have been appointed.

When pro-
visions of
act may be
applied to
other coun-
ties.

§ 16. The provisions of this act are extended to Sullivan county.

Extended
to Sullivan
county.

§ 17. This act shall take effect immediately and its operations shall cease at the expiration of the first term of office under the same unless the provisions hereof shall be revived by the act of the legislature.

When this
act ceases.

CHAPTER V.**Actions Relative to Real Property.****CHAP. 239.**

AN ACT to amend Title first, Chapter fifth, Part third of the Revised Statutes, relative to the action of ejectment.

PASSED May 7, 1840.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Plea of tender.

§ 1. In all actions of ejectment brought to recover any right of dower in real estate, where the husband of the claimant did not die seised of the premises in which dower is claimed, the defendant may have the same right to interpose the plea of tender he had previous to the passage of the Revised Statutes, and whenever the said plea shall be plead, the parties shall be subject to the same rules as to the payment of costs, as they were previous to the Revised Statutes, and all the provisions of the Revised Statutes inconsistent with the provisions of this act, are hereby repealed.

CHAP. 159.

AN ACT in relation to the stay of proceedings by bills of exceptions in actions of ejectment.

PASSED May 9, 1846.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Proceedings how long to be stayed.

§ 1. No bill of exceptions hereafter to be taken on the part of the defendant, in any action of ejectment, shall stay the proceedings therein for more than thirty days after the settlement of such bill, unless the party taking the same shall within that time procure the judge who presided at the trial of the cause, or a justice of the supreme court to certify on such bill that he has read and examined the same, and that there is probable cause for staying the proceedings in the suit in which such bill of exceptions was taken, and serve a copy of such certificate on the attorney of the opposite party.

CHAP. 337.

AN ACT to amend title first, of chapter fifth, of part third, of the Revised Statutes, in relation to the mode of commencing the action of ejectment.

PASSED October 26, 1847.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. The twelfth section, of the first title, of chapter fifth, of part third of the Revised Statutes, is hereby amended so as to read as follows: To such declaration there shall be subjoined a notice in writing, by the plaintiff, or his attorney, addressed to the defendant, and notifying him that a copy of said declaration has been filed in the office of the clerk of the court in which such action shall be brought, and that said defendant is required to appear and plead to such declaration in thirty days from the service of such declaration and notice, and that if he neglect so to appear and plead, a judgment by default will be entered against him, and the plaintiff will recover possession of such premises.

Notice to be given by plaintiff to defendant.

§ 2. Previous to the service of any such declaration, the plaintiff shall cause a copy of the same to be filed in the office of the clerk of the county where the premises are situated, and the same may be filed at any time previous to such service.

Copy of declaration to be filed.

3 How. P. R., 53.

§ 3. The fifteenth section of said title, is hereby amended by striking out the words "no rule to plead shall be entered," and inserting the "defendant's default for not pleading shall not be entered."

§ 4. The sixteenth section of said title is hereby amended by striking out all after the words "the plaintiff" in the second line and inserting the following: "after the expiration of thirty days from the service of said declaration and notice, upon filing an affidavit of the service thereof, and of the defendant's neglect to appear and plead, shall be allowed to enter the defendant's default, subject to the qualification in the preceding section mentioned."

Defendant's default when to be entered.

CHAP. 50.

AN ACT to amend the Revised Statutes entitled "Proceedings to compel the determination of claims to real property in certain cases."

PASSED February 18, 1848.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. The first section of title second of chapter fifth of part third of the Revised Statutes, is hereby amended by inserting the words, "or for a term of years not less than ten," after the word "life," wherever it occurs in said section, so that the section shall read as follows:

18 B., 332.

Section 1,
title 2,
chapter 5,
part 3,
Revised
Statutes
amended.

§ 1. Where any person singly, or he and those whose estate he has, shall have been for three years in the actual possession of any lands or tenements claiming the same in fee for life, or for a term of years not less than ten, he may compel a determination upon any claim which any other person may make to any estate, in fee or for life, or for a term of years not less than ten, in possession, reversion or remainder, to such lands and tenements, in the manner and by the proceedings hereinafter specified.

§ 2. The first division of the second section of said title, is hereby amended by inserting the same words after the word "life" therein, so that said subdivision will read as follows:

First di-
vision of
section 2 of
same title
amended.

His right to the premises demanded in a brief manner, and whether his estate therein is in fee or for life, or for a term of years not less than ten, and whether he holds the same as heir, devisee or purchaser, with the source or means by which his right immediately accrued to him.

Fourth di-
vision of
same sec-
tion and
title amen-
ded.

§ 3. The fourth subdivision of the second section of said title, is hereby amended by inserting the words "or for a term of years not less than ten," after the word "freehold" therein, and the eighth section of the same title is hereby amended by, inserting the same words after the word "freehold," wherever it occurs therein, and the ninth section of said title is hereby amended by inserting the same words after the word "life" therein.

All pro-
visions of
said title
extended.

§ 4. All the provisions of said second title, are hereby extended to estates for a term of not less than ten years, so far as the same are applicable thereto.

CHAP. 116.

AN ACT to amend title second, chapter fifth, of part third of the Revised Statutes, entitled "Proceedings to compel the determination of claims to real property in certain cases."

PASSED April 1, 1854.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. All the provisions of title second, chapter fifth, part third of the Revised Statutes, are hereby extended to corporations, as far as the same can be applied thereto, and corporations are hereby authorized to proceed under said title in the same manner as individuals.

Extended to corporations.

§ 2. Whenever any corporation shall proceed under said title, the notice mentioned in the second section thereof shall be subscribed with the name and place of residence of the agent or attorney of said corporation.

Notice, how signed.

CHAP. 511.

AN ACT to amend title two, part third, chapter five of the Revised Statutes, entitled "Proceedings to compel the determination of claims to real property."

PASSED April 14, 1855.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 11. In case of a trial under the above proceedings, either party, conceiving himself aggrieved, may appeal as in personal actions under the code.

Appeal allowed.

[The residue of this Act amends parts of the Revised Statutes.]

CHAP. 173.

AN ACT in relation to proceedings to compel the determination of claims to real property in certain cases.

PASSED April 6, 1860.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. All the provisions of title two, chapter five, part third of the Revised Statutes, entitled "Proceedings to compel the determination of claims to real property in certain cases," as amended by chapter fifty, of the Session Laws of the year one thousand eight hundred and forty-eight, and by chapter

Provisions of title 2, chapter 5, part 3, Revised Statutes, how to apply.

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five hundred and eleven, of the Session Laws of the year one thousand eight hundred and fifty-five, shall apply as well to any claim to an estate for a term of years not less than ten, in possession, reversion or remainder, in any lands or tenements, as to a claim to an estate in fee, or for life therein; and in all proceedings to be commenced, pursuant to the provisions of said title, and the acts amendatory thereof, the judgment to be rendered shall determine all claim to any estate for a term of years not less than ten, in possession, reversion or remainder, in the premises described in the notice, pleadings or proceedings, as effectually as any claim to an estate of inheritance or freehold in the premises; and shall bar and be as conclusive against the parties to such proceedings, and those claiming under them, in respect of any estate for such term of years, as a judgment rendered in such proceedings now is, or may be, in respect of an estate of inheritance or freehold.

CHAP. 200.

AN ACT in relation to the partition of lands.

PASSED April 21, 1831.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Bill how to
be answered.

§ 1. Whenever a suit shall be instituted in the court of chancery by bill, for the partition of any lands, tenements, or hereditaments, it shall not be necessary to serve a copy of such bill, except on the parties as they appear, nor any notice of presenting or filing the same on any of the defendants named in such bill; but the said defendants, or such of them as reside in this state, and can be found therein, shall be served with subpoena to appear and answer the bill, and the same may be taken as confessed according to the practice of the court of chancery.

In cases
where the
parties are
out of the
state.

§ 2. If any parties having an interest in such lands, tenements, or hereditaments are unknown, or if either of the known parties, whether minors or of full age, reside out of this state, or cannot be found therein, and such facts be made to appear to the court by affidavit, an order may be made by the court containing a sufficient description of the premises whereof partition is sought, and requiring all parties interested in the same to appear and answer the bill by a day in the said order to be specified, which order shall be published for three months, once in each week successively in the state paper, and in a newspaper printed in the county where the premises are situated, if there be any, and if there be none, then in a newspaper printed in the city of New York; and the publication of such order shall authorize a decree or order of the court for taking the said bill as confessed against all

such unknown parties and persons not resident in this state, or not found therein, as shall not appear and answer by the day mentioned in the said order, or on such further day as the court may appoint; and all such unknown parties as may appear shall be entitled to be made parties to the suit, and the said bill may be amended accordingly.

7 Pal., 596; 8 Pal., 513.

CHAP. 227.

AN ACT relative to the partition of lands.

PASSED April 25, 1833.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. When a bill shall be filed in the court of chancery before the chancellor or vice-chancellor, for the partition of any lands, tenements or hereditaments held in joint tenancy or tenancy in common, by any owner or owners thereof, and any of the joint tenants or tenants in common, who are defendants in such bill, are minors, for whom no suitable or disinterested person shall voluntarily signify his consent in writing to the said court to be appointed guardian by the said court, and offer to give the security required by the Revised Statutes in cases of partition, it shall be the duty of the said court, on the petition of the complainants, to appoint the register, assistant register, or either of the clerks of the said court, the guardian for such minor or minors, for the purpose of such partition, and to dispense with the securities so as aforesaid required: Provided, however, that a copy of the said petition and notice in writing, signed by the solicitor of the complainants, specifying the time and place when and where the said petition will be presented, shall be served at least ten days before the presentation of such petition upon the general guardian of such minor or minors, in case there be such guardian, or upon the minor, if there be none; proof of which service shall be duly made to the chancellor or vice-chancellor before whom such bill shall have been filed.

Guardians
for minors.

7 Pal., 596; 1 B., 72; 2 Ed., 69.

CHAP. 430.

AN ACT to amend the third title of the fifth chapter of the third part of the Revised Statutes, "of the partition of lands owned by several persons."

PASSED December 10, 1847.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. In suits for the partition of lands, tenements or hereditaments, an actual partition or sale as the case may require,

Actual par-
tition and
sale when

PART III
and how to
be made.

may be adjudged or decreed, whenever and as often as the court shall have ascertained and declared so many facts concerning the rights, titles and interests of all or any of the parties to such suit, that a fair and just partition or distribution of proceeds can be made by assigning to any party or parties in severalty, and to any set or sets of parties in common, according to the provisions of this or the next section, the shares in the premises belonging to such parties and sets of parties respectively, or of the proceeds of the sales of the said shares of such parties and sets of parties respectively. And whenever a partition or sale shall be so adjudged or decreed, costs may be awarded as shall seem just, and the court may take order to discharge from the suit any party or parties whose interest therein shall have wholly ceased, and for the custody of any lands or shares of proceeds, as to which the rights, titles and interests of the parties shall not have been fully ascertained and declared, and for such further proceedings as may be requisite, until the full ascertainment and declaration of the rights, titles and interests of all the parties.

15 N. Y., 626.

Shares or
proceeds
may be tem-
porarily
assigned or
set off.

§ 2. When it shall seem proper to the court that a partition or sale should be adjudged or decreed as in the preceding section provided, shares of the premises or proceeds as to which there are conflicting claims not affecting other shares in such premises or proceeds, may temporarily, and until the determination of such claims upon further proceedings had between the adverse claimants, be assigned or set off as in common to such adverse claimants, with a proper reservation of the questions of right between such claimants.

Amend-
ments
pleadings
may be in-
troduced.

§ 3. Whenever it shall appear on such further proceedings as are mentioned in the preceding sections of this act, that any amendment of the pleadings or proceedings is necessary in respect to any share in controversy, such amendment may be introduced by suggestion to be filed; saving to all parties in interest, the like right to answer such suggestion as in the case of an amendment of a bill or petition.

Shares may
be set off to
parties in
common.

§ 4. Whenever in any suit for the partition of any lands, tenements or hereditaments it shall appear to the court that two or more persons interested in such lands, tenements or hereditaments are desirous of enjoying their several shares or interests in common with each other, the court may direct a partition to be made in such manner as to set off to such of the parties as shall desire it, their shares respectively of such lands, tenements and hereditaments, and shall permit the respective shares or interests of those who shall desire it to remain without partition or allotment to be enjoyed by them in common.

Provision
respecting
the estate
of tenants
in dower or
by curtesy.

§ 5. Whenever the estate of any tenant in dower, or by the curtesy, or for life to the whole or any part or share of the premises in question has been admitted by the parties, or ascertained by the court to be existing at the time that judg.

ment shall be given that partition be made and the person entitled to such estate has been made a party to the proceedings, it shall be lawful for the commissioners to allot to such tenant his share thereof, without reference to the duration of such estate; and also to make partition of such share and allot the same to the parties respectively who shall be entitled to the remainder thereof, according to their respective rights therein, whenever in the opinion of the commissioners it can be done without prejudice to the rights of the parties.

CHAP. 277.

AN ACT in relation to the partition of lands.

PASSED April 14, 1852.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. Whenever an infant shall be possessed of real estate, as tenant in common or joint tenant, the supreme court may authorize proceedings to be instituted on behalf of such infant for a division and partition of said real estate; and for a sale thereof if it shall appear that such partition cannot be made without great prejudice to the owners.

Court may authorize proceedings for sale or partition when infants are possessed of real estate.

17 N. Y., 224; 25 B., 336.

§ 2. Such authority shall not be given nor shall such division, partition or sale, be directed by the court unless it shall be made satisfactorily to appear that the interests of such infant require such partition or sale; and the court shall appoint a competent next friend to conduct the proceedings on the part of such infant, which next friend shall be appointed upon the like application and in the like manner, and shall give such security and possess such powers as are specified and required in sections two, three and four, of title third chapter one of the third part of the Revised Statutes.

To be made satisfactory it is for the interest of infant.

§ 3. Whenever it shall appear that in any action, suit or proceeding for the partition of lands heretofore instituted or hereafter to be instituted in any court authorized to decree partition or sale thereof, any guardian for minors has entered upon the execution of his duties, and rules or orders have been made without the filing of the bond required by the fourth section of the third title of the fifth chapter of the third part of the Revised Statutes, or that such bond cannot be found on file, such court or any judge thereof may on application of any party to the suit or proceeding at any time before judgment or decree in all cases, or after judgment or decree in cases of actual partition, authorize and direct the filing of a bond by such guardian and the penalty and surety thereof to be filed as of the same date with the order appointing the guardian, which bond when so filed, and all pro-

In case of neglect of any guardian to file his bond.

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ceeding rules, orders and decrees in the suit subsequent to the date of the order appointing the guardian shall have the like force and effect in every respect as if such bond had been directed by the court and duly executed and filed by the guardian at the date of his appointment.

CHAP. 679.

AN ACT to protect purchasers of real estate, at sales in partition of land, owned by several persons.

PASSED April 16, 1857.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Provisions
applicable.

§ 1. The provisions contained in section one hundred and seventy-three of an act entitled "An act to amend certain sections of the Code of Procedure," passed April sixteen, one thousand eight hundred and fifty-two, are hereby made applicable to the third title, fifth chapter, third part of the Revised Statutes, entitled "Of the partition of lands owned by several persons."

CHAP. 261.

AN ACT concerning Trespasses on Lands contracted to be sold by the State.

PASSED April 25, 1829.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Certificate
evidence of
title.

§ 1. Any person who has obtained or shall hereafter obtain the certificate of the surveyor-general of having purchased any land of the people of this state, may upon obtaining the consent of the commissioners of the land office, and on such terms as they shall prescribe, bring and maintain actions for any injury done or to be done to such lands after the date of such certificate, in the same manner as he might have done had a patent been granted in lieu of such certificate.

Rights of
assignee.

§ 2. Any person to whom any such certificate has been or shall be legally assigned, may have the like remedy for any injury done, or to be done after such assignment.

CHAP. 573.

AN ACT for the more effectual prevention of wanton and malicious mischief.

PASSED July 18, 1853.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. Any person who shall maliciously or wantonly destroy, injure, or deface any monument, or work of art, building, fence, or other structure, or destroy or injure any ornamental tree, shrub or plant, whether situated on any private ground, or on any street, public place, public or private way, or cemetery, shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by fine not exceeding one hundred and fifty dollars, or by imprisonment not exceeding six months, or both. Every such person shall, moreover, be liable either before or after conviction to an action in favor of any party injured, in which action damages may be recovered to five times the amount of actual damages sustained.

Offence defined.

Penalty.

Personal action.

CHAP. 396.

AN ACT to punish nuisances and malicious trespasses on lands.

PASSED April 13, 1857.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. Any person who shall hereafter intrude or squat upon any lot or piece of land situated within the bounds of any incorporated city or village without license or authority from the owner thereof, or who shall place thereon any hut, hovel, shanty or other structure without such license or authority, or who shall place, erect or occupy within the bounds of any street or avenue of such city or village, any hut, hovel, shanty or other structure, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by imprisonment in a county jail not exceeding six months, or by a fine not exceeding five hundred dollars, or by both such fine and imprisonment.

Trespassers on lands.

Penalty.

§ 2. The owner of any lot or piece of land within the bounds of any incorporated city or village, may give notice to any intruder or squatter who may have heretofore intruded or squatted thereon, or who shall have succeeded to any other intruder or squatter thereon, to quit the same on a day to be specified, which shall not be less than ten days thereafter, which notice may be left upon the premises addressed to the occu-

Serving of notices.

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pant or occupants thereof, without specifying their names; and in case such intruder or squatter shall not quit the said premises at or before the expiration of the time specified in such notice, he and they shall be deemed guilty of a misdemeanor, and upon conviction may be punished by fine or imprisonment, or both, in the manner and to the extent provided in the preceding section.

Removal of
nuisances.

§ 3. The owner of said lot or piece of land upon which any hut, hovel, shanty or other structure shall or may have been placed without his previous license or authority, may cause the same to be removed and abated, and the intruders or squatters thereon to be removed from the said lot or piece of land at any time after the expiration of the ten days, or other time specified in the notice in the next preceding section mentioned.

CHAPTER VI.

Personal Actions.

CHAP. 271.

AN ACT relative to proceedings in suits commenced by declaration, and for other purposes.

PASSED April 29, 1833.

The People of the State of New York, represented in Senate and Assembly, do enact as follows :

Contingent
damages.
when as-
sessed.

§ 1. In actions against two or more persons, where an issue of fact shall be joined with one or more of the defendants, and the default of any other defendant shall have been entered for any cause, on the trial of such issue of fact, contingent damages may be assessed against such defendant in the same manner and with the like effect as if interlocutory judgment had been entered against such defendant.

3 N. Y., 445; 16 B., 183; 10 B., 640; 7 B., 654.

Duty of
sheriff.

§ 2. When a copy of a declaration shall be delivered to any sheriff to be served as provided by law, it shall be the duty of such sheriff to serve the same with all convenient speed, and to return the same, with his certificate endorsed thereon, of the time and manner of such service, either to the office of the clerk of the court in which such suit may be pending, or to the attorney whose name shall be endorsed on such declaration; and such certificate, signed by such sheriff or his deputy, shall be as effectual to authorize the entry of the defendant's appearance and default for not pleading; or in actions of ejectment, to authorize the entry of a rule to plead, as if the same had been sworn to by such officer. And the

return of any declaration delivered to a sheriff, may be forced by rule and attachment, in the same manner a return of a *capias*.

§ 3. Where an action against two or more persons upon any joint obligation, contract or liability, shall be commenced by the filing and service of a declaration, and it shall appear by the certificate of a sheriff, or by due proof, that the same has been served upon either of such persons, the defendant so served shall answer to the plaintiff, and the judgment in such action, if rendered in favor of the plaintiff, shall be against all the defendants in the same manner as if all had been served with such declaration; which judgment shall have the like effect, and execution thereon shall be issued as if process against such defendants had been served on one of them.

19 W., 120.

§ 4. Where any case shall be made or reserved, or bill of exceptions, demurrer to evidence, or special verdict shall be taken on the trial of any cause in any circuit court, the judge trying such cause may, in his discretion, direct that such case, bill, demurrer or verdict, shall be carried immediately to the supreme court, without being argued before a circuit judge.

Cases that may be carried to supreme court.

§ 5. For all purposes of entering rules for judgment and rules for other proceedings in the supreme court, the regular calendar terms of the said court shall be deemed to continue until and including Saturday of the fourth week of every such term; but nothing herein contained shall prevent the justices of the said court from hearing arguments and motions, and rendering judgment at any time after such fourth week; nor shall this act be so construed as to require the said justices actually to continue such term into or during the fourth week, or for a longer period than they are now by law required; nor shall it in any manner alter the existing law in regard to process or the teste and return thereof.

Proceedings.

§ 6. In suits and proceedings upon writs of mandamus, the supreme court may, in its discretion, award or refuse costs to any party therein.

Writ of mandamus.

1 B., 559.

§ 7. Actions on the case for injuries to personal property, shall be tried in the county where the venue shall be laid, subject to the power of the court to change the venue, in the same manner as in actions upon contracts.

Actions on the case.

15 B., 332.

§ 8. In all actions at law, the certificate of a notary, under his hand and seal of office, of the presentment by him of any promissory note or bill of exchange for acceptance or payment, and of any protest of such bill or note for non-acceptance or non-payment, and of the service of notice thereof on any or all of the parties to such bill of exchange or promissory note, and specifying the mode of giving such notice, and the reputed place of residence of the party to whom the same

Actions at law.

PART III.

was given, and the post-office nearest thereto, shall be presumptive evidence of the facts contained in such certificate; but this section shall not apply to any case in which the defendant shall annex to his plea an affidavit denying the fact of having received notice of non-acceptance or of non-payment of such note or bill.

5 D., 333; 4 D., 460; 2 H., 227, 451; 24 W., 234.

Instruments how
to be
proved to
read on
trials.

§ 9. Every written instrument, except promissory notes and bills of exchange, and except the last wills of deceased persons, may be proved or acknowledged in the manner now provided by law for taking the proof or acknowledgment of conveyances of real estate; and the certificate of the proper officer endorsed thereon, shall entitle such instrument to be received in evidence on the trial of any action with the same effect and in the same manner as if such instrument were a conveyance of real estate.

1 N. Y., 77; 23 B., 558; 17 B., 599.

CHAP. 197.

AN ACT relative to voluntary assignments of choses in action.

PASSED May 2, 1835.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

When assignee may
sue.

§ 1. The assignee or assignees for a valuable consideration of any bond, note, or other choses in action, which have been or may hereafter be assigned, if the assignor be dead and there be no executors or administrators appointed upon his or their estate, or if such executors or administrators have no interest in the things so assigned, or shall refuse to prosecute for the same, may sue and recover, in his, her or their own name or names, upon such bonds, notes and choses in action; and the defendant in all such suits, until due notice of such assignment shall have been given, may set up and avail himself of any defense he may have in any such action, in the same manner and with the like effect as if the assignor had been living, and the action had been prosecuted in his name.

16 B., 291; 7 B., 655; 6 B., 549; 5 D., 333.

CHAP. 385.

AN ACT to compel voluntary associations to furnish to the public the names of their members.

PASSED May 20, 1836.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. It shall be the duty of every association or company formed for the purpose of the transportation of passengers or property, either by boats, vessels or stages, to make a statement of the names of the persons composing such association or company, and to file in the clerk's office of each county through which such association or company may transact its business, a copy of such statement.

Names to
be filed in
clerk's
office.

§ 2. Until such statement shall be so filed, any action to be brought against such association or company, shall not be abated by reason that all the members of the association are not joined in the action.

Suits.

§ 3. After such statement shall be made and filed as above provided, any action brought against the persons named in such statement, shall not be abated for the reason that other owners may have become interested, unless thirty days previous to the bringing of such action, a further statement shall be filed as provided in the first section of this act, showing any change in the several persons composing such association, and the time when such change took place; nor shall any action become non-suited or defeated by reason that any of said persons have ceased to be interested therein, unless at least thirty days before such action is brought, a notice thereof shall be filed as aforesaid.

No abate-
ment by
death.

CHAP. 243.

AN ACT in relation to pleading in certain cases.

PASSED May 12, 1846.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. In every action in which the defendant shall plead any discharge from his debts, or from arrest or imprisonment, obtained under any by virtue of the act of Congress entitled "A law to establish a uniform system of bankruptcy throughout the United States," passed August 19, 1841, the plaintiff may reply generally, that such discharge or exemption was obtained by fraud, and pray the same may be enquired of by the country, and may annex thereto a notice, specifying the several acts of fraud, of which evidence will be given on the

Fraudulent
discharges
under bank-
rupt act of
1841 may be
inquired
into and
invalidated.

PART III.

trial, to invalidate such discharge or exemption ; which shall entitle such plaintiff to give evidence of the matters so specified on the trial, in the same manner as if they had been specially replied.

CHAP. 262.

AN ACT concerning the canceling and discharging of judgments.

PASSED May 3, 1834.

The People of the State of New York, represented in Senate and Assembly, do enact as follows :

Judgment
how can-
celed.

§ 2. In case the party in whose favor a judgment has been or shall be rendered in any court of record, reside out of this state, the docket of such judgment may be canceled and discharged by the clerk thereof, upon filing with him an acknowledgment of satisfaction, signed by such party or by his executors or administrators, and acknowledged before either of the officers before whom conveyances of real estate may now be acknowledged or proved, by persons residing or being out of this state.

Letter of
attorney.

§ 2. In all cases of acknowledgement of satisfaction of judgments, by virtue of a letter of attorney, or other instrument containing a power to acknowledge satisfaction, such letter or instrument shall be acknowledged by the party executing the same, or proved by a subscribing witness thereto in the manner prescribed by law, before the clerk of the court in which the judgment has been rendered, or before either of the officers before whom conveyance of real estate may now be acknowledged or proved, and such letters of attorney or other instruments shall be filed with such clerk with the satisfaction piece.

Acknow-
ledgement
before
whom
made.

§ 3. Acknowledgment of satisfaction of judgments may be made before the clerk of the court in which the judgment was rendered.

CHAP. 189.

AN ACT to amend article second, title fifth, chapter sixth, part third of the Revised Statutes, entitled "Of executions against property."

PASSED May 2, 1835.

The People of the State of New York, represented in Senate and Assembly, do enact as follows :

Sheriff's
deed to
whom to be
given.

§ 1. In all cases where any sale of real estate has been, or shall hereafter be made under execution, and a certificate thereof given to the purchaser, but no deed executed pur-

suant to the provisions of article second, title fifth, chapter sixth, part third of the Revised Statutes, it shall be the duty of the sheriff making such sale, and in case of his death or removal from office, of his under sheriff, to execute a deed of the estate so sold and remaining unredeemed, to any person or persons to whom such certificate shall have been, or shall be duly assigned, or to the executors or administrators of any deceased assignee.

4 D., 145, 210; 1 D., 244; 7 H., 94; 4 H., 608.

§ 2. Before any assignee, or his personal representative, shall be entitled to a deed under this act, he shall cause the execution of any and every assignment under which such deed is claimed, to be duly acknowledged or proved, as deeds are required by law to be acknowledged or proved to entitle them to be recorded, before some officer authorized to take the acknowledgment and proof of deeds; and shall cause all such assignments with their certificates of proof or acknowledgment, to be filed in the office of the clerk of the county in which the real estate so sold is situated; but it shall not be necessary to have acknowledged the execution of any assignment heretofore made of such certificate.

Assign-
ment to be
acknow-
ledged.

2 N. Y., 490; 4 D., 145, 480; 1 D., 244; 7 H., 94; 4 H., 608, 613;
1 W., 46.

§ 3. Any officer, authorized by law to take the proof of deeds, is authorized and required to take the acknowledgment or proof of such assignments, and to certify the same; which certificate, or a copy certified by such clerk, shall have the like force and effect as in case of deeds.

Acknow-
ledgment to
be certified.

§ 4. In case any deed shall be executed to executors or administrators by virtue of this act, the estate thereby conveyed shall be held, and may be sold, as is provided in the sixty-fourth section of the said article.

Deed to
executors
or adminis-
trators.

CHAP. 525.

AN ACT amending the Revised Statutes in relation to sales of real estate on executions.

PASSED May 26, 1836.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. A creditor by mortgage on real estate, his assignee or representative, where the mortgaged premises or any part thereof have been sold on execution, shall have the same right to acquire the interest of the purchaser of such real estate so mortgaged and sold, as is given to a judgment creditor, by section fifty-one of title five, article second, chapter six of the third part of the Revised Statutes; and on acquiring such interest, shall be subject to all the provisions of said

Mortgagee
may redeem

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article second, in relation to the rights of other creditors, as are now applicable to judgment creditors by said article.

9 B., 17; 1 B., 379, 388; 3 D., 527; 4 Cow., 420; 1 Cow., 428, 501.

In what manner.

§ 2. To entitle a creditor by mortgage, his assignee or representative, to acquire the title of the original purchaser, or to be substituted as a purchaser from any other creditor, pursuant to this act and the act hereby amended, he shall present to, and leave with such purchaser or creditor, or the officer who made the sale, the following evidence of his right:

1. A copy of the mortgage under which he claims the right to purchase, duly certified by the clerk of the county where said mortgage is registered or recorded.

2. A copy of the assignment or assignments, where the mortgage has been assigned, verified by his affidavit, or the affidavit of some witness to such assignments.

3. A copy of the letter of administration, or letters testamentary, where an administrator or executor applies to be substituted as a purchaser.

4. An affidavit by such mortgage creditor, his assignee or representative, or by his attorney, or agent, stating the true sum due, or to become due on such mortgage at the time of claiming such right to purchase, over and above all payments.

2 N. Y., 484, 490; 27 B., 55; 10 B., 167; 4 D., 145; 1 D., 662; 7 Pal., 167; 7 H., 91, 178, 341; 4 H., 608; 2 H., 53; 20 W., 555, 602; 19 W., 87; 18 W., 598.

CHAP. 462.

AN ACT to amend title fifth, chapter sixth, part third of the Revised Statutes, relative to the sale and redemption of real estate sold under execution.

PASSED May 16, 1837.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Leasehold property.

§ 1. So much of title fifth, chapter sixth, part third of the Revised Statutes, as relates to the sale and redemption of real estate, which shall be sold under execution, shall be applicable to the sale and right of redemption of leasehold property, where the lessee, or the assignee of the lessee, shall be possessed of at least five years unexpired term of the lease, and also of any building or buildings that may be erected thereon.

7 H., 150; 1 H., 324; 20 W., 416.

CHAP. 387.

AN ACT authorizing mortgagees to redeem real estate sold for taxes and assessments.

PASSED May 14, 1840.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. No sale of real estate hereafter made for the non-payment of any tax or assessment shall destroy or in any manner affect the lien of any mortgage thereon duly recorded or registered at the time of such sale except as hereinafter provided.

Lien of mortgage not destroyed by tax sale.

4 H., 613.

§ 2. It shall be the duty of the purchaser at such sale to give to the mortgagee a written notice of such sale, requiring him to pay the amount of the purchase money, with the interest at the rate allowed by law thereon, within six months after the giving of such notice.

Purchaser to give notice to mortgagee.

§ 3. If such payment shall be made the sale shall be of no further effect, and the mortgagee shall have a lien on the premises, for the amount paid, with the interest which may thereafter accrue thereon, at the rate of seven per cent per annum, in like manner as if the same had been included in his mortgage.

Effect of redemption by mortgagee.

§ 4. In case the mortgagee shall fail to make such payment, within the time so limited, he shall not be entitled to the benefit of the first section of this act.

Failure to redeem.

§ 5. The term "mortgagee," as used in this act, shall be construed to include assignees whose assignment shall be duly recorded, and personal representatives; and the term "purchaser" shall be construed to include assignees, and real or personal representatives, as the case may be.

Construction of certain terms.

§ 6. The notice required by this act may be given either personally or in the manner required by law in respect to notices of non-acceptance or non-payment of notes or bills of exchange; and a notarial certificate thereof shall be presumptive evidence of the fact of such notice; such certificates may be recorded in the county in which the mortgage was recorded, in the same manner, and with same effect, as is by law prescribed in respect to deeds or other evidences of title of real estate.

Notice how given.

Evidence of notice.

CHAP. 157.

AN ACT to extend the exemption of household furniture and working tools from distress for rent, and sale under execution.

PASSED April 11, 1842.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Articles
exempt
from exe-
cution.

§ 1. In addition to the articles now exempt by law from levy and sale under execution, there shall be exempted from such sale, necessary household furniture, and working tools and team, owned by any person being a householder or having a family for which he provides, to the value of not exceeding two hundred and fifty dollars, and in addition thereto, there shall also be exempted from such levy and sale, the necessary food for said team for a period not exceeding ninety days; provided that such exemption shall not extend to any execution issued on a demand for the purchase money of such furniture, or tools, or team, or the food for said team, or the articles now enumerated by law.

As amended by Laws of 1859, ch. 134.

22 N. Y., 253; 11 N. Y., 281; 1 N. Y., 129; 32 B., 291; 31 B., 169; 29 B., 389; 27 B., 507; 25 B., 52; 23 B., 249; 22 B., 656; 19 B., 157; 15 B., 568; 14 B., 457; 10 B., 91; 9 B., 676; 6 B., 327; H. & D., 384; 5 D., 119; 3 D., 52, 594; 1 D., 128, 462; 1 Du., 606; 1 S. S. C., 730; 19 W., 475; 16 W., 562; 1 Cow., 114; 18 J. R., 400; 17 How. P. R., 80; 14 How. P. R., 519; 8 How. P. R., 75; 6 How. P. R., 18, 424; 5 How. P. R., 288; 3 Ab., 466.

See Laws of 1858, ch. 107.

Exemption
for a widow
and minor
children,
§150.

§ 2. When a man having a family, shall die, leaving a widow, or minor child or children, there shall be inventoried by the appraisers, and set apart for the use of such widow, or for the use of such widow and child or children, or for the use of such child or children, in the manner now prescribed by the ninth section of title third, chapter sixth, of part second of the Revised Statutes, necessary household furniture, provisions or other personal property, in the discretion of said appraisers, to the value of not exceeding one hundred and fifty dollars, in addition to the articles of personal property now exempt from appraisal by said section.

6 H., 642; 6 N. Y., 597.

Sale or
pledge void
when made
for intoxi-
cating
liquors.

§ 3. Every assignment, sale or pledge of articles which are now exempt by law from execution, and of property exempted by this act, and every levy or sale of such articles or property by virtue of an execution, by consent of the defendant therein, shall be void, where the consideration, or any part thereof, for which such assignment, sale or pledge was made, or for the debt on which judgment was rendered in any court, and on which such execution was issued, was for the sale of intoxicating liquors; and in any action commenced for the

recovery of the value of the property sold as aforesaid, the person for whose benefit such sale or transfer was made, may be called and examined as a witness, as to the fact of the sale of intoxicating liquors, so made in the same manner, and subject to the same penalties, as if called in any other case.

CHAP. 104.

AN ACT regulating liens upon real estate by judgments and decrees.

PASSED April 1, 1844.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. The sixty-fourth section of the act entitled “An act concerning the proof of wills, executors and administrators, guardians and wards, and surrogates’ courts,” passed May 16, 1837, is hereby repealed.

§ 2. The sixty-fourth section of last said act shall be as follows:

§ 64. On such certificate being filed with the clerk of any county, the same shall be entered and docketed on the books now required by law to be provided and kept for the purpose of docketing judgments, the transcripts or certificates of which shall be filed with such clerk, and shall thenceforth be a lien on all the lands, tenements, real estate and chattels real of every person against whom such decree shall be entered, situate in the county in which said surrogate’s certificate may be filed, and execution shall be issued thereon in the same manner as though the same was a judgment recovered in the court of common pleas of said county.

Effect of docketed judgments in clerk’s office.

§ 3. The term “decree” as used in the thirty-first and thirty-second sections of the act entitled “An act concerning costs and fees in the courts of law, and for other purposes,” passed May 14, 1840, shall be held to mean and include, as well decrees made by a surrogate for the payment of money by an executor or administrator or guardian, as decrees in chancery.

Meaning of the term decree.

§ 4. The last clause of the thirtieth section of the last named act shall be amended so as to read as follows: “Such execution shall be returned to and filed with the clerk of the court from which it was issued.”

Amendment.

§ 5. Whenever any judgment or decree shall be reversed, vacated or satisfied of record, the certificate of the clerk, register or assistant register of the court, with whom said judgment was rendered or decree was entered of that fact under his seal of office, shall be sufficient authority on being filed with the clerk of any county with whom such judgment or decree may have been duly docketed, to discharge and cancel such docket thereof; for which certificate the officer

Dockets when to be discharged and canceled.

PART III.

Judgments
recovered
in the court
of common
pleas in
New York.

furnishing the same shall be entitled to charge twelve and a half cents.

§ 6. No judgment hereafter recovered in the court of common pleas for the city and county of New York, shall be a lien on real estate situate in said city and county, until a transcript of said judgment shall be filed with, and the judgment docketed by the clerk of said city and county, in which case, if such transcript be filed within ten days after the docketing of said judgment in said court of common pleas, it shall be a lien on such real estate from the time of its rendition, except as against mortgagees and purchasers in good faith, who have become such mortgagees or purchasers before the filing of such transcript. But if it be not filed within that time it shall be a lien only from the time of filing and docketing the same with the clerk of said city and county.

Power of
courts re-
specting
dockets of
judgments.

§ 7. The supreme court, the court of chancery, the superior court of the city of New York, and the several mayors' courts' in this state shall respectively have and possess the same jurisdiction and power concerning the dockets of their judgments kept by the several county clerks which the supreme court possesses concerning the dockets of its judgments in the offices of the clerks of the said supreme court: and may in the same cases, direct the amending and correcting of such dockets and the docketing of judgments nunc pro tunc, with said county clerks: and the several courts of common pleas of each of the counties in this state, shall possess the like jurisdiction and power respecting the dockets of their judgments with the clerks of other counties.

6 B., 312.

Repeal.

§ 8. The thirty-second, thirty-third and thirty-eighth sections of the act entitled "An act concerning costs and fees in courts of law, and for other purposes," passed May 14, 1840, are hereby repealed.

19 B., 532; 3 D., 45, 171.

CHAP. 324.

AN ACT in relation to interest on judgments, and for other purposes.

PASSED May 7, 1844.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Interest on
judgments.

§ 1. Every judgment shall bear interest from the time of perfecting the same.

4 D., 551.

§ 2. Section nine of article one of title five of chapter six of part three of the Revised Statutes is hereby amended so as to read as follows:

CHAP. VI
Interest on
executions.

§ 9. Whenever a judgment shall be rendered and execution shall be issued thereon, it shall be lawful to direct, upon such execution, the collection of interest on the amount recovered, from the time of recovering the same until such amount be paid.

§ 3. It shall be lawful for any party to a suit, who shall have obtained a verdict, or a report of referees, in his favor, to tax interest upon the amount of such verdict, or report, as costs, from the time of the obtaining of the same, to the time of the perfecting judgment thereon.

Interest on
recoveries.

7 H., 146; 2 D., 188.

§ 4. It shall be lawful for the clerk of the city and county of New York to charge and receive six cents for filing a transcript and docketing judgment, where such judgment shall be recovered in the superior court of the city of New York, or in the court of common pleas of the city and county of New York, or either of the counties of Westchester, Rockland, Kings, Queens, or Richmond, and the like sum for filing a transcript and docketing a judgment of the supreme court, in all cases where the attorney for the party in whose favor such judgment shall be recovered, shall reside in either of the counties of New York, Kings, Queens, Richmond, Rockland, or Westchester.

Fees of
clerk of
New York.

CHAP. 150.

AN ACT in relation to imprisonment of attorneys and others, upon execution.

PASSED May 9, 1846.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. In all actions upon contract for moneys received by any attorney, or by any other male person in a fiduciary capacity, the defendant or defendants shall be liable to imprisonment in the same manner as in actions for wrongs.

Attorneys
and others
liable to
imprison-
ment.

CHAP. 85.

AN ACT to exempt certain Burying Grounds from sale on legal process.

PASSED April 19, 1847.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. Land set apart and a portion of which has been actually used for a family or private burying ground, shall not be sub-

Grounds
exempted
from sale.

PART III.

ject to levy and sale by any execution or other legal process whatever.

3 D., 527.

Saving
clause.

§ 2. The exemption provided for in the foregoing section, shall not extend to more than one-fourth of an acre of land, nor to any building or erection other than a vault or other place of deposit for the dead; nor shall any land be exempt by the provisions of this act, unless the owner shall, before said sale, have made, certified and acknowledged in the manner required for the acknowledgment of deeds, a description of said land, and procured the same to be recorded in the office of the clerk of the county in which said land is situated, and said clerk shall record the same in the proper book for recording deeds and in the same manner.

CHAP. 390.

AN ACT to amend section first of article sixth title first chapter fifth of part second of the Revised Statutes concerning voluntary assignments.

PASSED November 22, 1847.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Collecting
interlocu-
tory costs.

§ 2. No person shall be imprisoned for the non-payment of interlocutory costs or for contempt of court in not paying costs, except attorneys, solicitors and counsellors and officers of court when ordered to pay costs for misconduct as such, and witnesses when ordered to pay costs on attachment for non-attendance.

By execu-
tion.

§ 3. Process in the nature of a fieri facias against personal property may be issued for the collection of such costs founded on such order of court.

12 N. Y., 36; 2 B., 397.

CHAP. 410.

AN ACT to amend title five of chapter six of the third part of the Revised Statutes, "of executions against property."

PASSED November 30, 1847.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. The fifty-first section of title five of chapter six of the third part of the Revised Statutes is hereby amended so as to read as follows:

When cred-
itors may
redeem

Any creditor having in his own name, or as assignee, representative, trustee or otherwise, a decree in chancery or a

judgment at law, rendered at any time before the expiration of fifteen months from the time of such sale, or having a mortgage duly recorded within the same period, and which shall be a lien and charge upon the premises sold, or upon any parcel which shall have been separately sold, by paying the sum of money which was paid on the sale of such premises, or upon any parcel which shall have been separately sold, together with the interest thereon, at the rate of seven per cent, a year, from the time of such sale, shall thereby acquire all the rights of the original purchaser, subject to be defeated by any other like creditor, in the manner mentioned in said title, and in the act entitled "An act amending the Revised Statutes, in relation to sales of real estate on executions," passed May 26, 1836.

23 B., 282.

§ 2. All the provisions of the said title shall extend and apply to liens by mortgage in the same manner as they do to liens by judgment or decree.

§ 3. All redemptions which shall hereafter be made on or after the last day of the fifteen months by any creditor, pursuant to the said title, and of the said act passed the 26th of May, 1836, shall be made at the sheriff's office of the county in which the sale took place, and it shall be the duty of the officer making the sale, to attend at said office during the last day for making such redemptions, and during the time thereafter in which such redemptions may be made, and in case of the absence of the officer who made the sale, from the sheriff's office, at such time, then such redemption may be made to the sheriff; and in his absence, to the under sheriff or any deputy present at such office; and when any redemption shall be made prior to the last day of the said fifteen months, the officer to whom such redemption shall be made shall immediately thereafter file in the office of the clerk of the county a statement of such redemption, which shall contain the title of the cause, or if it be a mortgage, the parties to the mortgage, the amount of the judgment, decree or mortgage; the assignee, representatives or trustees thereof, if any, and the amount paid to redeem, the time when such redemption was made, and the sum claimed to be due upon such judgment, decree or mortgage at the time of such redemption.

§ 4. Any creditor having a right to redeem, may redeem within twenty-four hours after any preceding redemption; and no deed upon any sale or redemption shall be executed until after the lapse of twenty-four hours after the last redemption.

§ 5. Whenever any redemption shall have been made, of any real estate so sold, it shall be the duty of the officer making such sale, or of any other person who may lawfully act in his behalf, to execute to the person making such redemption, his certificate, truly stating all such facts transpir-

CHAP. VI.
lands sold
and rights
acquired
thereby.

Redemp-
tions of real
estate
where to be
made by
creditors.

To whom
redemption
may be
made if
officers be
absent.

Duty of
sheriff
when re-
demption is
made by
creditor.

Within
what time
creditor
may redeem

Certificate
of redemp-
tion to be
made and
delivered to
redeeming
creditor.

PART III.

Certificates may be proved and acknowledged and when filed to have the effect of deeds.

Compensation of officers.

This act not to apply to particular cases.

ing before him at the making of such redemption, as shall be sufficient to show the fact of such redemption.

§ 6. Such certificate may be proved or acknowledged as deeds are required to be, to entitle them to be recorded, and being duly recorded in the clerk's office of the county where the real estate so sold is situate, shall have the same effect as against subsequent purchasers, and incumbrances as deeds and conveyances duly proved and recorded; and such certificate or the record thereof, or a duly authenticated copy of such record, shall be received in all courts and places as prima facie evidence of the facts therein stated.

§ 7. The officer making such certificate shall be entitled to the like compensation as he is by law entitled to, for a certificate of sale.

§ 8. The provisions of this act shall not apply to any case in which the sale shall have taken place prior to the passage thereof.

CHAP. 260.

AN ACT to exempt for sale on Execution the Homestead of a householder having a family.

PASSED April 10, 1850.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Homestead exempted to the value of \$1,000.

Term of exemption.

How released.

§ 1. In addition to the property now exempt by law from sale under execution, there shall be exempt by law from sale on execution for debts hereafter contracted, the lot and buildings thereon, occupied as a residence and owned by the debtor, being a householder and having a family, to the value of one thousand dollars. Such exemption shall continue after the death of such householder, for the benefit of the widow and family, some or one of them continuing to occupy such homestead until the youngest child become twenty-one years of age, and until the death of the widow. And no release or waiver of such exemption shall be valid unless the same shall be in writing, subscribed by such householder, and acknowledged in the same manner as conveyances of real estate are by law required to be acknowledged.

15 N. Y., 491; 26 B., 374; 19 B., 157.

Description of premises to be recorded.

§ 2. To entitle any property to such exemption the conveyance of the same shall show that it is designed to be held as a homestead under this act, or if already purchased, or the conveyance does not show such design, a notice that the same is designed to be so held shall be executed and acknowledged by the person owning the said property, which shall contain a full description thereof, and shall be recorded in the office of the clerk of the county in which the said property is situate,

in a book to be provided for that purpose, and known as the "Homestead Exemption Book." But no property shall by virtue of this act, be exempt from sale for non-payment of taxes or assessments, or for a debt contracted for the purchase thereof, or prior to the recording of the aforesaid deed or notice.

Not exempt from sale for taxes or purchase money.

26 B., 374; 8 How. P. R., 523, 527.

§ 3. If, in the opinion of the sheriff holding an execution against such householder, the premises claimed by him or her as exempt, are worth more than one thousand dollars, he shall summon six qualified jurors of his county, who shall upon oath, to be administered to them by such sheriff, appraise said premises, and if, in the opinion of the jury, the property may be divided without injury to the interests of the parties, they shall set off so much of said premises, including the dwelling house, as in their opinion, shall be worth one thousand dollars, and the residue of said premises may be advertised and sold by such sheriff.

Proceedings when sheriff thinks premises worth more than \$1,000.

§ 4. In case the value of the premises shall, in the opinion of the jury, be more than one thousand dollars, and can not be divided as is provided for in the last section, they shall make and assign an appraisal of the value thereof, and deliver the same to the sheriff, who shall deliver a copy thereof to the execution debtor, or to some of his family, of suitable age to understand the nature thereof, with a notice thereof attached, that unless the execution debtor shall pay to said sheriff the surplus over and above one thousand dollars within sixty days thereafter, that such premises will be sold.

Notice of valuation to be given.

§ 5. In case such surplus shall not be paid within the said sixty days, it shall be lawful for the sheriff to advertise and sell the said premises, and out of the proceeds of such sale to pay to such execution debtor the said sum of one thousand dollars, which shall be exempt from execution for one year thereafter, and apply the balance on such execution; provided, that no sale shall be made unless a greater sum than one thousand dollars shall be bid therefor, in which case sheriff may return the execution for want of property.

Premises when to be sold.

§ 6. The costs and expenses of setting off such homestead, as provided herein, shall be charged and included in the sheriff's bill of costs upon the said execution.

Expenses of sale to form part of sheriff's bill of costs.

CHAP. 295.

AN ACT to provide for the enforcement of judgment liens against the real estate and chattels real of deceased judgment debtors.

PASSED April 10, 1850.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Execution may be issued against property of deceased debtor.

§ 1. Notwithstanding the death of a party after judgment, execution thereon against any property, lands, tenements, real estate, or chattels real, upon which such judgment shall be a lien, either at law or in equity, may be issued and executed in the same manner and with the same effect as if he were still living, except that such execution can not be issued within a year after the death of the defendant, nor in any case unless upon permission granted by the surrogate of the county who has jurisdiction to grant administration or letters testamentary on the estate of the deceased judgment debtor, which surrogate may, on sufficient cause shown, make an order granting permission to issue such execution as aforesaid.

§ 2. This act shall apply to all judgments, whether rendered before or after the passage of this act.

CHAP. 21.

AN ACT in relation to the liberties of jails.

PASSED February 18, 1851.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. The county courts of this state shall possess the same powers and jurisdiction in their respective counties in relation to the liberties of jails, as were vested in courts of common pleas, by article third, title six, chapter seven, part three of the Revised Statutes.

CHAP. 60.

AN ACT relative to sheriffs' certificates upon the sale of real estate.

PASSED March 2, 1857.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Certificates to be recorded.

§ 1. Whenever a certificate of sale of real estate by a sheriff shall be filed in the office of the clerk or register of any county

pursuant to section forty-three of title five, chapter six of the Revised Statutes, it shall be the duty of such clerk immediately to record the same in a book to be kept by him for that purpose, and the same shall be properly indexed in the name of the defendant or defendants in the judgment, for which service the clerk or register shall be entitled to the same fees allowed him for recording conveyances, to be paid by the sheriff out of the avails of the sale, except in counties where the clerk or register is a salaried officer.

§ 2. The record thereof, or a certified copy of such record, shall be evidence of the facts therein contained in all courts and places, the same as if the original record were produced.

The record
to be evi-
dence.

CHAP. 107.

AN ACT to modify the exemption laws in relation to judgments rendered for a claim accruing for work and labor performed in a family as a domestic.

PASSED April 7, 1858.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. The act entitled "An act to extend the exemption of household furniture and working tools from distress for rent, and sale under execution," passed April eleventh, eighteen hundred and forty-two, shall not apply to any judgment rendered for a claim accruing for work and labor performed in a family as a domestic.

CHAP. 6.

AN ACT to authorize county clerks to enter satisfaction of judgments in certain cases.

PASSED January 28, 1860.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. Upon the payment to the sheriff of a county of the amount due upon any execution in his hands, issued upon a judgment obtained in any other county, such sheriff shall, on demand, deliver to the person paying the same, a copy of such execution, and of his endorsement of satisfaction thereon, and shall certify the same to be a copy, and shall be entitled to receive twenty-five cents therefor; and upon filing such certified copy with the clerk of the first mentioned county, such clerk shall enter satisfaction of the said judgment upon the docket, in the same manner and with the like effect as if the said judgment had been obtained in such county and

Sheriff may
deliver
certified
copies of
executions
when satis-
fied.

Clerk to
enter satis-
faction of
judgment
upon
docket.

PART III.

the original execution had been returned satisfied; but nothing herein contained shall exempt the sheriff from returning the original execution to the clerk of the county in which the judgment was obtained.

Satisfaction of judgment may be entered by county clerk.

§ 2. Satisfaction of such judgment may also be entered by the clerk of any county where the same shall have been docketed, upon producing to and filing with such clerk the certificate of the clerk with whom the copy of the execution and indorsement of satisfaction was filed, as aforesaid, stating that such copy has been filed and such judgment discharged.

CHAP. 473.

AN ACT to amend article two of title five of chapter six of part three of the Revised Statutes, entitled "Of executions against property."

PASSED April 23, 1862; three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Superintendents of the poor may redeem on sheriff's sales.

§ 1. The county superintendents and overseers of the poor in the several counties of the state, except the county of New York, shall have the same right to redeem the real estate which may have been seized by them pursuant to the provisions of title one of chapter twenty of part one of the Revised Statutes, as is now possessed by judgment creditors under the said article second of title five of chapter six of part three of the Revised Statutes.

When their seizure is confirmed.

§ 2. No such redemption shall be made by the said superintendents or overseers, unless at the time of making such redemption the seizure of the real estate sought to be redeemed shall have been confirmed by the court of sessions of the county where such premises may be situated, nor unless such real estate shall at the time of making such redemption, be held by the said superintendents or overseers, under and by virtue of the seizure made by them pursuant to the provisions aforesaid.

Redemption regulated.

§ 3. To entitle such superintendents or overseers to acquire the title of the original purchaser, or to be substituted as purchaser from any other creditor, pursuant to the provisions aforesaid, they shall present to and leave with such purchaser or creditor, or the officer who made the sale the following evidence of their right:

1. A copy of the order of the court of sessions, confirming the warrant and seizure of such real estate, duly certified to by the clerk of the said court of sessions.

2. An affidavit by one of such superintendents or overseers that the real estate sought to be redeemed is held by such superintendents or overseers under such warrant and seizure,

and that the same have not been discharged, annulled or reversed, but are then in full force.

§ 4. The said superintendents or overseers shall, for the purpose of making such redemption, have power to use any moneys in their hands belonging to the poor funds of their respective towns or counties.

§ 5. The moneys which may be used by them for the purpose aforesaid, shall be repaid, together with interest thereon, at the rate of seven per cent per annum from the time of such redemption, out of the first moneys which may be received by them from the rent or sale of the premises so redeemed.

§ 6. If such redemption shall be made and the person against whom the warrant was issued and seizure made, under the provisions of the said title one of chapter twenty of part one, shall apply to have the said warrant discharged, he shall, before such warrant and seizure shall be discharged, in addition to the security required to be given by section eleven of the said title, pay to such superintendents or overseers the sum so paid by them to redeem the said real estate, together with interest thereon, at the rate of seven per cent per annum from the time of such redemption.

When warrant of seizure may be discharged.

CHAPTER VII.

Proceedings in Actions.

CHAP. 191.

AN ACT to amend the act providing for taking depositions to be used in courts in other states.

PASSED April 21, 1831.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. If upon application to any justice of the peace of any town in this state, it shall satisfactorily appear, upon affidavit or otherwise, to the justice to whom such application is made, that a suit is pending in any court in any other state of the United States, and that any person residing in the town in which such application is made, is a material witness for either party to such suit; and that, according to the practice of the court in which such suit is pending, the deposition of a witness taken before a justice of the peace in this state, will be received on the trial or hearing of such suit, such justice shall issue his summons requiring such witness to appear before him, at a place within the town in which such witness resides, at some reasonable time, to testify in such suit.

Justice may summon witness.

**PART III.
Testimony.**

§ 2. The justice before whom such witness shall appear shall take down his testimony in writing, and shall certify and transmit the same to the court before which such suit is pending, in such manner as the practice of the court may require.

Penalty.

§ 3. If any person shall refuse or neglect to appear at the time and place mentioned in the summons issued in accordance with this act; or if, on his appearance, he shall refuse to testify, he shall be liable to the same penalties as would be incurred for a like offence on the trial of a suit in a justice's court.

Pay of witness.

§ 4. Every witness who shall appear and testify in manner aforesaid, shall be entitled to receive from the party at whose instance he shall have been summoned, fifty cents for each day he shall give his attendance.

CHAP. 158.

AN ACT declaring the mode of proving the Ordinances of the Common Council of the city of New York, and other Records, Documents and Proceedings.

PASSED April 17, 1832.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

How to be read.

§ 1. Every act, ordinance, resolution or proceeding of the common council of the city of New York, may be read in evidence in all courts of justice in this state, either,

1. From a copy of such act, ordinance, resolution or proceeding, certified by the clerk of the common council, with the seal of the corporation affixed, or

2. From the volume of ordinances printed by authority of the common council.

1 E. D. S., 398.

Charter of the city.

§ 2. The charter of the city of New York may be read in evidence from the volume containing such charter printed by authority of the common council, or from a copy certified by the clerk of the common council.

5 N. Y., 444.

CHAP. 159.

AN ACT to facilitate the proof of legal notices.

PASSED April 25, 1835.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Affidavit of printer or foreman.

§ 1. The affidavit of the printer, or foreman of such printer of any public newspaper published in this state, of the publi-

cation of any notice or advertisement, which by any law of this state shall be required to be published in such newspaper, shall be entitled to be read in evidence in all courts of justice in this state, and in all proceedings before any officer, body or board in which it shall be deemed necessary to refer thereto, and shall be prima facie evidence of such publication and of the facts stated therein.

CHAP. 439.

AN ACT in relation to the proof of judgments rendered before justices of the peace in other states.

PASSED May 24, 1836.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. A transcript of the docket of any justice of the peace of any town, city or county in any adjoining state, of any judgment had before him; of the proceedings in the cause before such judgment; of his jurisdiction in said cause; of the execution issued thereon, if any, and of the return of said execution, if any, when subscribed by such justice, and verified in the manner prescribed in the next succeeding section, shall be presumptive evidence to prove the facts stated in such transcript. Transcripts

6 W., 438; 3 W., 267; 2 J. R., 181, 378; 3 J. Ca., 595; 2 J. Ca., 256.

§ 2. To entitle such transcript to be read in evidence, there shall be attached thereto a certificate of the said justice that the said transcript is in all respects correct, and that he the said justice, had jurisdiction of said cause; and also, a further certificate of the clerk or prothonotary of the county in which said justice resided at the time of rendering said judgment, under the seal of the court of common pleas of said county, specifying that the person subscribing such transcript was, at the date of such judgment, a justice of the peace of said county, and that the signature thereto, is in his own proper handwriting. How to be authenticated.

§ 3. Such judgment and proceedings, and the authority to render such judgment may also be proved by the justice who rendered such judgment, by producing his docket, or a copy of the said judgment, in court, and appearing and being sworn and examined as a witness, to the truth and correctness thereof, and of his authority to render said judgment. Id.

5 J. R., 129, 351; 7 W., 281.

§ 4. Nothing in this act contained shall be construed to prevent the introduction of evidence to controvert any and all parts of the proof in relation to the validity of said judgment, so rendered in an adjoining state. Saving clause.

CHAP. 243.

AN ACT to amend articles eight and thirteen, of title four, chapter two, part third of the Revised Statutes, relating to courts held by justices of the peace.

PASSED April 18, 1838.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. The one hundred and eighteenth section of title four, article eight, chapter two of the third part of the Revised Statutes, is hereby amended so that it shall read as follows:

Judgment
of discon-
tinuance
when to be
entered.

If previous to joining issue in any cause, (except where the defendant shall have been arrested by warrant,) the defendant shall make affidavit that the justice before whom the same is pending, is a material witness for such defendant, without whose testimony he cannot safely proceed to trial, and shall set forth therein the particular facts and circumstances which he expects to prove by the justice, judgment of discontinuance shall be entered, if the justice shall be satisfied that he is a material witness for the defendant, and that without his testimony the defendant cannot safely proceed to trial, and not otherwise, but without costs against either party.

24 W., 264; 3 H., 32; 2 S. S. C., 517.

Justice may
issue a com-
mission to
examine
witnesses
in other
counties.

§ 2. Whenever an issue of fact shall have been joined in any action or suit before a justice of the peace, and it shall appear on the application of either party that any witness not residing within the county where said suit is pending or the county adjoining, is material in the prosecution or defence of such action or suit, the said justice may award a commission to one or more competent persons, authorizing them or any one of them to examine such witness on oath upon the interrogatories settled by the said justice, and certified by his approbation, entered or endorsed thereon, or by the written agreement or assent of the parties annexed to such commission; to take and certify the depositions of such witness, and to return the same, according to the directions given with such commission, in which commission both parties may unite.

7 H., 77; 3 H., 497, 500.

Notice to
be served
on adverse
party.

§ 3. Such commission may be granted at the instance of either party by such justice of the peace, at any time, upon proof that due notice of such application for such commission has been served on the adverse party at least six days before the time of making such application; but the issuing of such commission shall not postpone the trial beyond the time now authorized by law. And whenever the defendant shall neglect to appear, or to plead in such action or suit, and the plaintiff shall make application for a commission to take the deposi-

Commis-
sion to
examine
witnesses.

tion of a material witness for the prosecution of such action or suit, the justice may award a commission without notice, to one or more competent persons to examine such witness on oath, upon interrogatories proposed by the plaintiff, and settled by the justice to take and certify the deposition of such witness, and to return the same according to the directions given in such commission.

As amended by Laws of 1847, ch. 329.

§ 4. The commission shall be executed and returned, as is prescribed by statute when a commission issues out of a court of record, and the deposition and testimony taken in pursuance thereof shall be received on the trial as testimony in the cause, with the like effect as if such witness were personally examined at such trial.

Return how to be made.

3 H., 497.

CHAP. 303.

AN ACT relating to documentary evidence.

PASSED May 14, 1845.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. A copy of any records and proceedings of the district and circuit courts of the United States, may be received in evidence in all courts of this state, when certified by the clerk or officer in whose custody the same is required by law to be, to have been compared by him with the original and to be a correct transcript therefrom, and of the whole of such original, and attested by the official seal of such officer.

Copies of records of district court United States evidence.

12 N. Y., 156; 5 W., 375; 2 W., 411; 7 Cow., 434; 3 J. R., 310; 3 J. Ca., 595; 2 J. Ca., 256; 1 Du., 142; 1 Ab., 97.

CHAP. 240.

AN ACT in addition to an act entitled "An act relating to documentary evidence," passed May 14, 1845.

PASSED May 12, 1846.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. A copy of any act, proceeding, record, document, roll, warrant, order, or other paper or writing, now or hereafter remaining in any of the departments of the government of the United States, may, when certified by the head or acting chief officer at the time being of such department to have been compared by him with the original, and to be a correct transcript therefrom, and of the whole of such original, and attested by the seal of his department, be given in evidence in all courts of this state, with the like effect as the original.

Copies of documents may be certified and read in evidence.

PART III.
Saving
clause.

§ 2. This act and the act hereby amended shall not, nor shall either of them, prevent the proof of such record, act, proceeding, document, roll, warrant, order, or other paper or writing, according to the rules of the common law, or in any other manner.

18 N. Y., 86; 5 B., 681; 3 B., 100; 24 W., 87; 19 W., 383; 17 W., 312;
9 W., 44; 4 W., 75; 1 W., 561; 14 J. R., 308.

CHAP. 462.

AN ACT to authorize parties in civil suits, at their election, to obtain the testimony of the adverse party.

PASSED December 14, 1847.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Adverse
parties may
be required
to give
testimony.

§ 1. Any party in any civil suit or proceeding either in law or equity, had before any court or officer, may require any adverse party whether complainant, plaintiff, petitioner or defendant, or any one of said adverse party, and every person who is beneficially interested in said suit or proceeding, though not nominally a party, to give testimony under oath in such suit or proceeding; and such adverse party may be examined orally or under a commission, in the same manner as persons not parties, to such suit or proceeding, and who are competent witnesses therein, and such party may be subpoenaed and his attendance as a witness compelled, or he may be examined by a commission or conditionally, or his testimony perpetuated in the same manner as any competent witness.

23 N. Y., 27; 5 B., 158; 1 S. S. C., 689.

Court or
officer may
dismiss
bill, &c.

§ 2. The court or officer before whom such suit or proceeding may be had, shall have power to dismiss the bill, petition, or proceeding of any party, or any part thereof, with costs, or nonsuit any party, or strike out or disregard any defence, or any part thereof, of any party who shall refuse to testify.

Adverse
party to be
summoned
to attend
trial.

§ 3. Any party in any suit or proceeding as aforesaid, shall be required, to entitle him to examine the adverse party as a witness in any such suit or proceeding, to summon such adverse party to attend the trial or hearing in such suit or proceeding to give testimony therein, in the same manner that the attendance of witnesses in ordinary cases, shall be compelled; and shall pay or tender to such party at the time of summoning him, the like fees that witnesses shall be entitled to receive in similar suits, and shall also pay to such party, from day to day, the fees of a witness for attendance.

Penalty for
false swear-
ing.

§ 4. Every person examined as a witness pursuant to the provisions of this act, who shall on such examination, wilfully and corruptly swear falsely in giving material testimony, shall upon conviction thereof, suffer the pains or penalties of wil-

ful and corrupt perjury; but all persons examined in pursuance of the provisions of this act, shall be entitled to the same privileges and exemptions as other witnesses; and the same rules of evidence, examination and impeachment shall apply to the party so examined as a witness, and to the testimony given by him, as in the case of other witnesses.

§ 5. If a party in any suit shall be called and sworn by the opposing party as a witness, such party shall be entitled to be sworn as a witness in the cause in any new or second trial of the cause, or upon any appeal in such cause; but in case such party shall testify on such second or other trial without being called by the opposing party first calling him, such opposing party shall also be entitled to be sworn and testify on such second or other trial.

Witnesses called in a new or second trial of a cause.

CHAP. 197.

AN ACT in relation to documentary evidence.

PASSED April 7, 1848.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. In all cases when a seal of any corporation is authorized or required by law, the same may be affixed by making an impression directly on the paper, which shall be as valid as if made on a wafer or on wax.

Impression may be made on paper.

15 N. Y., 225.

[Section 2 local.]

§ 3. This act shall take effect immediately, but shall not affect the rights or remedies of parties to any suit or proceedings in law or equity, commenced before the passage of this act.

Saving clause.

CHAP. 312.

AN ACT relative to the proof of the statute and common law of other states and territories.

PASSED April 12, 1848.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. Printed volume copies of the statute laws of any other of the United States, or of the territories thereof, if purporting to be published under the authority of the respective governments, or if commonly admitted and read as evidence in their courts, shall be admitted in all courts of law, and on all other occasions in this state as prima facie evidence of such laws.

Printed laws of states evidence.

6 W., 475; 5 W., 375; 2 W., 411; 1 J. R., 385.

PART III.
Unwritten
law how
proved.

§ 2. The unwritten or common law of any other of the United States, or of the territories thereof, may be proved as facts by parol evidence, and the books of reports of cases adjudged in their courts, may also be admitted as evidence of such law.

6 W., 475 ; 5 W., 375.

CHAP. 180.

AN ACT to correct the tax books in the comptroller's office, and authorizing extracts from records in his office to be taken therefrom and read as evidence.

PASSED March 30, 1849.

The People of the State of New York, represented in Senate and Assembly, do enact as follows :

Brief state-
ments to be
made.

§ 1. The comptroller is hereby authorized to insert at the head of each column, on the first page of each of the several books of sales of lands for taxes in his office, a brief statement of what the words or abbreviation or figures contained in the several columns are intended to represent.

Certified
copies how
made.

§ 2. The comptroller is also authorized to insert in any certified copy given by him from any part of the books aforesaid, at the head of the respective columns therein, the statement at the head of corresponding column in the book from which it was made, with the same effect as if the column from which such copy is taken were headed in like manner.

Extracts.

§ 3. The comptroller is also authorized to furnish extracts from the returns of his department of unpaid taxes, and from the tax books therein, in reference to any lot or piece of land, certifying that such extract contains all that is stated in such return or book relating to such lot or piece of land, and such certified extract may be read in evidence in all courts and proceedings with the same effect as the original return or book.

CHAP. 94.

AN ACT in relation to documentary evidence.

PASSED March 25, 1850.

The People of the State of New York, represented in Senate and Assembly, do enact as follows

Exemplifi-
cation by
surrogates
of wills
before 1st
January,
1850, to
have same

§ 1. The exemplification of the record of any last will and testament, proved before the surrogate of any county in this state, before the first day of January, one thousand eight hundred and thirty, certified under the seal of the officer having

the custody of such record, shall be received in evidence with the like effect as if the original will had been produced.

CHAP. VII
force as
original
will.

As amended by Laws of 1852, ch. 175; 24 N. Y., 128.

CHAP. 85.

AN ACT to amend title three, part third, chapter seven, article eight of the Revised Statutes, in relation to the collection of debts due the state, upon lost evidences of debts or lost paper.

PASSED March 26, 1855.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. Section ninety-five of title three, part third, chapter seven and article eight of the Revised Statutes is hereby amended so that it shall not be applicable to any action which has been, or shall hereafter be commenced by, or in behalf of the people of this state, or where the people of this state shall in anywise be interested as a party to the action.

Revised
Statutes
not to affect
the state.

CHAP. 173.

AN ACT in relation to documentary evidence.

PASSED March 24, 1857.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

The exemplification of the record of any last will and testament proved before the surrogate of any county in this state, or before the surrogate or judge of probate of any county within any other state within the United States, before the first day of January, one thousand eight hundred and thirty, certified under the seal of the officer having the custody of such record, shall be received in evidence with the like effect as if the original will had been produced and proved.

Copies of
wills may
be evi-
dence.

As amended by Laws of 1861, ch. 12.

CHAP. 244.

AN ACT to authorize certain affidavits to be given in evidence.

PASSED April 15, 1858.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. Whenever it shall be necessary on the trial of any action or in any judicial proceeding, to prove the service of

Affidavit of
service of
notice.

any notice, an affidavit showing such service to have been made by the person making such affidavit, shall be received as presumptive evidence of such service, upon first proving that such person is dead or insane.

CHAP. 251.

AN ACT relative to documentary evidence.

PASSED April 17, 1862 ; three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Bill of sale
of vessel.

§ 1. The record of any bill of sale, mortgage, hypothecation or conveyance of any vessel of the United States, duly recorded in the office of the collector of customs where such vessel is registered or enrolled, or a transcript or copy thereof duly certified by said collector, may be read in evidence in any of the courts of this state, and in any judicial proceedings in this state, with the like force and effect as the original bill of sale, mortgage, hypothecation or conveyance.

CHAP. 375.

AN ACT to amend the Revised Statutes in relation to taking the testimony of witnesses out of the state.

PASSED April 19, 1862.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Commission to
examine
witnesses.

§ 1. Whenever a default shall have been taken for want of any appearance or answer or other pleading in any action, and in any proceeding pending in any court of record, and whenever any issue of fact shall have been joined in any such action or proceeding, and it shall appear on the application of either party that any witness not residing in this state is material in the prosecution or defence of such action or proceeding, the court may, upon such terms as it shall think proper, award a commission to one or more competent persons, authorizing them or any one of them to examine such witness on oath upon the interrogatories annexed to such commission; to take and certify the deposition of such witness, and return the same according to the directions given with such commission; but in all cases of default for want of appearance, no notice of such application shall be required to be served on the adverse party.

CHAP. 471.

AN ACT to facilitate the taking of oaths and affirmations and the acknowledgment or proof of written instruments by persons in the military service of this State or the United States, as Volunteers.

PASSED April 23, 1862 ; three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. Any person holding the rank of colonel or any higher rank in the New York State volunteers in the service of the United States, and any commissioned officer in said service, and who is a counsellor of the supreme court of this state, may administer and certify any oath or affirmation which any person may wish to take or make, who is actually in the said volunteer service, whenever such officer or person shall be out of this state.

Who may administer oaths, &c.

§ 2. Any oath or affirmation, specified in the previous section of this act when taken and certified according to this act, may be read and used in any place or before any court, officer or tribunal in this state for any purpose with like force and effect as if administered, taken, had, made or done before any civil officer in this state.

Legal effect thereof.

§ 3. The persons performing any service under this act shall be entitled to charge and receive the same fees therefor as if performed in this state by any civil officer in this state, authorized to perform a like service.

Fees.

§ 4. The secretary of state of this state shall immediately after the passage of this act, cause ten copies thereof, attested by his hand and official seal to be forwarded at the expense of this state to the commandant of each regiment of the New York State volunteers in the service of the United States.

Copies of act to be distributed.

CHAP. 201.

AN ACT to amend the fourteenth section, title second, chapter sixth, part third of the Revised Statutes, relating to the venue in actions against public officers.

PASSED April 18, 1843.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. The fourteenth section, title second, chapter sixth, part third of the Revised Statutes is hereby amended by adding thereto the following proviso: "Provided, however, that actions brought by the county or town officers of one county

Actions where to be laid.

PART III.

in their official capacity, against the county or town officers of another county in their official capacity, shall be laid in some county adjoining the county of the defendants, except the county of the plaintiffs.

Venue may
be changed
in certain
cases.

§ 2. The venue in any such action now pending in the county of the defendants, may be changed to any adjoining county except that of the plaintiffs, as provided in first section by either party, upon notice of not less than fourteen days to the other party ; and all papers which have been filed in such suit may be taken from the files of the court in which they now are, and filed in the court to which the cause may be removed, and the costs may be taxed and the cause may proceed to final judgment in said court, with the same effect and in the same manner as though the said cause had been originally commenced in the court to which it is so removed.

CHAP. 134.

AN ACT to provide for additional challenges to jurors.

PASSED April 27, 1847.

The People of the State of New York, represented in Senate and Assembly, do enact as follows :

Peremptory
challenge in
civil cases.

§ 1. Upon the trials of any issue or issues of fact joined in a civil action, each party shall be entitled peremptorily to challenge two of the persons drawn as jurors for such trials.

25 B., 30 ; 9 B., 161.

Ib. criminal
cases.

§ 2. Every person arraigned and put on trial for any offense not punishable with death, or with imprisonment in a state prison ten years, or for a longer time, shall be entitled peremptorily to challenge five of the persons drawn as jurors for such trial, and no more ; except that in cases tried in any court of special sessions, said right of peremptory challenge shall extend to only two of said persons so drawn.

Challenges
for cause
not affected.

§ 3. Nothing in this act contained shall be deemed to prevent any challenges heretofore allowed, either to the array of jurors or to individual jurors.

CHAP. 8.

AN ACT relative to the attendance of Petit Jurors at County Courts and Courts of Sessions.

PASSED February 2, 1861 ; three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows :

Power of
county
judge.

§ 1. The county judge, in any of the counties of this state, is hereby authorized, at the time of drawing grand and petit

jurors, to attend any county court or court of sessions, to be held in their respective counties, to designate any day during said term, that he may deem expedient, on which the petit jurors shall be required to attend for trial of issues of fact, and it shall be the duty of the sheriff of the county to summon such petit jurors to attend such court on the day designated by the county judge.

§ 2. The petit juror so summoned shall attend such court, on the day designated, pursuant to the first section of this act, and shall receive compensation for their attendance from that day only. Duty of jurors.

CHAP. 210.

AN ACT to amend the Revised Statutes in relation to trials by jury.

PASSED April 13, 1861; three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. The clerk of every county, in addition to the box by law now provided and kept for the purpose of containing the names of jurors drawn to serve at any court, shall provide another box, in which he shall deposit the names of all persons who have been selected and returned as suitable persons to serve as jurors, and who reside in the city or town where courts are appointed by law to be held. Town or city lists of jurors.

§ 2. Whenever a sufficient number of jurors duly drawn and summoned, do not appear or cannot be obtained to form a jury, the court may order the sheriff to draw, in the presence of the court, from the box so kept by the clerk of the county, and containing the names of persons returned to serve on petit juries, for the city or town where such court is held, the names of so many persons as shall be sufficient and as the court may direct. The court may also by the consent of the parties to any action pending therein, order the sheriff to summon from the bystanders or from the county at large, so many persons qualified to serve as jurors, as shall be necessary to make the full panel of jurors on the trial of such action. Tales may be drawn from that box.

§ 3. The sheriff shall forthwith summons the persons so drawn and make return thereof, in the same manner as now provided by law, in cases where persons are summoned as jurors from the bystanders; and the persons so summoned shall attend forthwith and serve as jurors unless excused by the court, and shall be subject to the same penalties for neglect or refusal to attend. Sheriff to summon them.

§ 4. This act shall not apply to the city and county of New York, nor to the county of Kings.

§ 5. All acts and parts of acts, inconsistent with this act, are hereby repealed.

CHAP. 206.

AN ACT to authorize certain officers to administer oaths and affirmations in particular cases.

PASSED April 13, 1854.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Certain officers of U. S. in other countries may administer oaths.

§ 1. The officers authorized by the fifth and sixth sections of chapter three, part second, of the Revised Statutes, to take the proof and acknowledgment of deeds conveying real estate, and also any other consul or vice-consul or minister resident, of the United States, appointed to reside at any foreign port or place, are hereby authorized to administer oaths or affirmations to any person or persons who may desire to make such oath or affirmation; and any affidavit or affirmation made before any such officer, and certified and authenticated as provided in the seventh section of said chapter in respect to the proof and acknowledgment of a deed conveying real estate, may be read in evidence and shall be as good and effectual to all intents and purposes as if taken and certified by an officer authorized to administer oaths, residing in this state, and no other proof of the official character of such officer than the certificate annexed to such affidavit or affirmation shall be required.

CHAPTER VIII.

Special Proceedings.

CHAP. 258.

AN ACT in relation to suits by and against joint stock companies and associations.

PASSED April 7, 1849.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Suits how to be brought and prosecuted.

§ 1. Any joint stock company or association, consisting of seven or more shareholders, or associates, may sue and be sued, in the name of the president or treasurer, for the time being, of such joint stock company or association; and all suits and proceedings so prosecuted, by or against such joint stock company or association, and the service of all process or papers in such suits and proceedings on the president or treasurer for the time being, of such joint stock company

or association, shall have the same force and effect as regards the joint rights, property and effects of such joint stock company or association, as if such suits and proceedings were prosecuted in the names of all the shareholders or associates, in the manner now provided by law.

28 B., 665; 23 B., 33; 21 B., 654.

§ 2. No suit so commenced shall abate by reason of the death, removal, or resignation of such president or treasurer of such joint stock company or association, or the death or legal incapacity of any shareholder or associate during the pendency of such suit; but the same may be continued by or against the successor of the officer in whose name such suit shall have been commenced.

Suits not to abate.

§ 3. The president or treasurer of any such joint stock company or association, shall not be liable in his own person or property, by reason of any suit prosecuted as above provided, by or against him, as the nominal plaintiff or defendant therein: provided that such president or treasurer shall not be exempted from any liability to which he may be otherwise legally subject as a stockholder or shareholder in such joint stock company or association.

President and treasurer not to be personally liable.

§ 4. Suits against any such joint stock company or association, in the first instance shall be prosecuted in the manner provided in the first section of the said act; but after judgment shall be obtained against any such joint stock company or association, as above provided, and execution thereon shall be returned unsatisfied in whole or in part, suits may be brought against any or all of the shareholders or associates, individually, as now provided by law; but no more than one suit shall be brought and maintained against said shareholders at any one time, nor until the same shall have been determined, and execution issued and returned unsatisfied in whole or in part. No death, removal, resignation of officers or shareholders, or sale or transfer of stock shall work a dissolution of any such joint stock company or association as against the parties suing or being sued by such company, as herein provided, or as against any creditor or person having any demand against such company at the time of any such death, removal, resignation, sale or transfer.

Suits against company.

Death, removal or resignation of officers not to work a dissolution.

As amended by Laws of 1853, ch. 153.

§ 5. Nothing herein contained shall be construed to confer on the joint stock companies or associations mentioned in the first section of this act, any of the rights or privileges of corporations, except as herein specially provided.

Saving clause.

CHAP. 455.

AN ACT to extend the "act in relation to suits by and against joint stock companies and associations," to companies having a joint or common interest in property.

PASSED July 9, 1851.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Companies
with seven
members.

§ 1. The act entitled "An act in relation to suits by and against joint stock companies and associations," passed April seventh, one thousand eight hundred and forty-nine, is hereby extended to any company or association, composed of not less than seven persons who are owners of or have an interest in any property, right of action, or demand, jointly or in common, or who may be liable to any action on account of such ownership or interest; and the suits and proceedings authorised by the said act may be brought and maintained in the manner therein provided, as well for any cause of action heretofore existing as for any that may hereafter accrue.

23 B., 33; 21 B., 654.

CHAP. 343.

AN ACT relative to the collection of fines and recognizances in the city of New York.

PASSED May 6, 1839.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Sections to
apply.

§ 1. All the provisions contained in article second, title sixth of chapter eight of part third of the Revised Statutes, from section sixteen to section forty-second inclusive, shall apply to the several courts of record of the city and county of New York, and sections forty-third, forty-fourth and forty-fifth of the same article are hereby repealed.

District
attorney
not to
prosecute
without
order of
court.

§ 2. It shall not hereafter be the duty of the district attorney of the city and county of New York, to prosecute forfeited recognizances, unless by the express order of the court of general sessions, or of the court of oyer and terminer of said city and county; and in all cases where he shall prosecute such recognizance in pursuance of such order, he shall be entitled to costs; but in no other cases of suits on forfeited recognizances shall he be authorized to charge the county any costs.

CHAP. 333.

AN ACT in relation to fines, recognizances and forfeitures.

PASSED April 25, 1861.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. No fine imposed by any court, for any criminal offence, shall be remitted or reduced, except upon an application made in open court, and upon proof that two days' notice in writing, of such application, and copies of the papers upon which the same is founded, have been served upon the district attorney of the county in which the conviction was had, and by an order of the court, entered by the clerk thereof in its minutes.

Remission
of fines.

§ 2. Every recognizance taken by any court, or by any magistrate, coroner or other officer, to appear and answer at any court, and the complaint, inquisition, affidavits and other papers upon which such recognizance is founded, shall be filed in the office of the clerk of the court at which the party is thereby recognized to appear, within ten days after the same is so taken.

Recogni-
zances to
be filed.

§ 3. The eighth section of the fourth article of an act entitled "An act for the establishment and regulation of the police of the city of New York," passed May seven, eighteen hundred and forty-four, is hereby declared to be in force, and shall be applicable to the city and county of New York.

Section
applicable
to New
York.

CHAP. 482.

AN ACT to provide for the collection of demands against ships and vessels.

PASSED April 24, 1862; three-fifths being present.

The People of the State of New York, represented in Senate and Assembly do enact as follows:

§ 1. Whenever a debt, amounting to fifty dollars or upwards, as to a sea going or ocean bound vessel, or amounting to fifteen dollars or upwards, as to any other vessel, shall be contracted by the master, owner, charterer, builder or consignee, of any ship or vessel or the agent of either of them within this state, for either of the following purposes:

When debt
a lien on
vessel,
tackle, &c.

1. On account of work done or materials or other articles furnished in this state for or towards the building, repairing, fitting, furnishing or equipping such ship or vessel.

PART III.

2. For such provisions and stores furnished within this state as may be fit and proper for the use of such vessel, at the time when the same were furnished.

3. On account of the wharfage and expenses of keeping such vessel in port, including the expense incurred in employing persons to watch her.

4. On account of loading or unloading, or for advances made for the purpose of procuring necessities for such ship or vessel, or for the insurance thereof.

5. Or whenever a debt amounting to twenty-five dollars or upwards shall be contracted as aforesaid, within this state, on account of the towing or piloting such vessel, or on account of the insurance or premiums of insurance of or on such vessel, or her freight. Such debt shall be a lien upon such vessel, her tackle, apparel and furniture, and shall be preferred to all other liens thereon, except mariners' wages.

5 H., 34; 20 W., 177; 13 W., 390, 601; 5 W., 510, 564; 1 W., 557.

When debt
ceases to be
a lien.

§ 2. Such debt shall cease to be a lien at the expiration of six months after the said debt was contracted, unless at the time when said six months shall expire such ship or vessel shall be absent from the port at which such debt was contracted, in which case the said lien shall continue, until the expiration of ten days after such ship or vessel shall next return to said port; and, in all cases, such debt shall cease to be a lien upon such ship or vessel, whenever such ship or vessel shall leave the port at which such debt was contracted, unless the person having such lien shall, within twelve days after such departure, cause to be drawn up and filed specifications of such lien, which may consist either of a bill of particulars of the demand or a copy of any written contract under which the work may be done, with a statement of the amount claimed to be due from such vessel, the correctness of which shall be sworn to by such person, his legal representative, agent or assigns.

6 H., 494.

Specifica-
tion of lien
to be filed
in county
clerk's
office.

§ 3. Such specification shall be filed in the office of the clerk of the county in which such debt shall have been contracted, except that when such debt shall have been contracted in either of the counties of New York, Kings or Queens such specification shall be filed in the office of the clerk of the city and county of New York.

When war-
rant may
issue to
enforce
lien.

§ 4. Any person having a lien upon any ship or vessel for any debt contracted for any of the purposes hereinbefore specified, may make application to any officer authorized by law to perform the duties of a justice of the supreme court at chambers in the county within which such ship or vessel shall then be, for a warrant to enforce the said lien, and to collect the amount thereof.

20 W., 181.

§ 5. Such application shall be in writing, and shall exhibit and specify:

1. By whom and when such debt was contracted, and for what ship or vessel.

2. The items composing such debt.

3. The amount claimed, and that the same is justly due to the person in whose behalf the application is made, over and above all payments and just deductions.

4. Any assignment or transfer of such debt, if any such has taken place since the same was contracted.

5. When and where the specification of such debt was filed.

Such application shall be verified by the affidavit of the creditor, or of the person making the application, or of his or their agent in that behalf.

§ 6. The officer to whom such application shall be made shall thereupon issue a warrant to the sheriff specifying the amount of the claim, and the names of the persons making such claim, and commanding him to attach, seize and safely keep said ship or vessel, her tackle, apparel and furniture, to satisfy such claim, if established, to be a lien upon such vessel, according to law, and to make return of his proceedings under such warrant to the officer who issued the same within ten days after such seizure. Such sheriff shall also, in his return, state whether he has seized said ship or vessel by virtue of any other warrant or warrants, and specify in whose behalf, and for what sums such other warrants have been issued, respectively, and the time of his reception thereof. Warrant.

§ 7. Such warrant shall not be issued unless the person applying therefor shall deliver to the officer to whom the application is made to be filed by him, an undertaking to the effect that if the said applicant do not within the time hereafter specified in section eleventh of this act prosecute any bond which may be given upon the discharge of such warrant, or if the said applicant in any action brought upon such bond be finally adjudged not to have been entitled to such warrant, the parties giving such undertaking will pay all costs that may be awarded against such applicant, not exceeding the sum specified in the undertaking, which shall be at least one hundred dollars, and any damages that may be sustained by reason of the seizure of such vessel under such warrant, not exceeding the sum of fifty dollars. The undertaking required by this section shall be executed by the applicants or one of them, or their agent, and at least one surety, who shall be a resident and householder within this state. Such undertaking shall be approved by the said officer. Under-
taking.

§ 8. Any sheriff to whom such warrant shall have been directed and delivered shall forthwith execute the same, and shall keep the said vessel, her tackle, apparel and furniture, to be disposed of as is herein directed. Duty of
sheriff.

§ 9. The person applying for such warrant shall, within three days after the issuing thereof, cause a notice to be pub- Notice of
issuing

PART III.
warrant to
be pub-
lished.

lished once in each week for four successive weeks in some newspaper published in the county in which such vessel may then be, or, if no newspaper be so published in such county, then in the nearest county in which a newspaper shall be so published, setting forth that such warrant has been issued, the amount of the claim specified therein, the day when such warrant was issued, and that such vessel will be sold for the payment of the claims against her, unless the master, owner or consignee thereof, or some person interested therein, appear and discharge such warrant according to law, within thirty days from the first publication of such notice.

Application
to dis-
charge war-
rant.

§ 10. The owner, consignee, agent or commander of any vessel seized by virtue of any warrant issued pursuant to the provisions of this title, or any person interested in such vessel, may at any time before such vessel be sold, as hereinafter provided, apply in person or by attorney to the officer who issued such warrant, on one day's notice, to the said attaching creditor or his attorney, for an order to discharge the same. Said notice shall specify the names, places of residence and places of business of the proposed sureties.

Bond.

§ 11. Such person shall execute and deliver to the officer to whom such application is made, a bond to the creditors prosecuting such warrant, in a penalty at least double the amount specified in the warrant, conditioned that the obligors therein will pay the amount of any and all claims and demands which shall be established to be due to the person or persons in whose behalf such warrant was issued, and to have been a subsisting lien upon such vessel pursuant to the provisions of this act, at the time of exhibiting the same. In all such cases the attaching creditors shall have the right to examine the sureties as to their sufficiency, at such time and place as shall be fixed by the judge to whom application is made.

Sureties.

26 W., 505; 19 W., 527.

When war-
rant to be
discharged.

§ 12. Upon such bond being executed and delivered to such attaching creditor or his attorney, and the taxed fees of the sheriff paid, the said officer shall thereupon grant his order discharging the warrant that may have been issued by him in favor of such creditor, and no further proceedings against the said vessel so seized shall be had under the provisions of this title, founded upon any demand secured by such bond. Such bond may be prosecuted in any court having jurisdiction thereof at any time within three months after such delivery, but not afterwards.

Action in
bond.

§ 13. If in any action brought upon such bond it be found that any sum be due the plaintiff, which was a subsisting lien upon such ship or vessel at the time of exhibiting the same as herein provided, judgment shall be rendered that the plaintiff recover the same with the costs and allowances of the action and the costs of the attachment, as herein provided, and he have execution therefor. But if in such action

it be found that no subsisting lien existed in favor of the plaintiff at the time of exhibiting his claim, then judgment shall be rendered against such plaintiff for the costs and allowances of such action and the costs of the attachment, as herein provided, including the amount of the sheriff's fees due and paid on releasing such vessel from the warrant.

§ 14. The costs of the attachment shall be in addition to the disbursements; for filing specification of a lien, two dollars; for exhibiting a lien and procuring a warrant therefor, when the amount of the lien is under fifty dollars, ten dollars; when the amount of the lien exceeds fifty dollars and is under two hundred and fifty dollars, twenty dollars; when the amount of the lien exceeds two hundred and fifty dollars and is under one thousand dollars, thirty dollars; and when the amount of the lien exceeds one thousand dollars, fifty dollars; for attending to the discharge of any warrant upon a bond, ten dollars. The sheriff shall be entitled in proceedings under this act to the following fees and expenses: For serving warrant, one dollar; for returning the same, one dollar; for the expenses of keeping such vessel in custody, the necessary sums paid by him therefor, not exceeding, however, the sum of two dollars and fifty cents for each day the vessel shall have been held by him in custody. Such sheriff shall not be entitled to receive any other or greater sums than those above specified, for any service rendered by him in any proceeding under this act, nor shall he be allowed expenses of custody upon more than one warrant at the same time. All costs, disbursements and fees shall be verified by affidavit and adjusted by the officer who issued the warrant.

Costs on attachment.

Sheriff's fees.

§ 15. If the creditor who shall have exhibited his claim shall not have been satisfied, and if such vessel shall not have been discharged within thirty days after the first publication of the notice required by the ninth section of this act, upon due proof of the publication of such notice, the officer who issued such warrant shall issue his order to the sheriff holding the vessel under such warrant, directing such sheriff to proceed and sell the vessel so seized by him, her tackle, apparel and furniture, and such order shall state the amount deemed necessary to be raised to satisfy all unsatisfied liens which have been exhibited against such vessel. Upon proof of personal service of the notice required by the ninth section of this act, and of notice of the application for sale upon the owners of the vessel, and upon all other unpaid creditors who have filed specifications of their liens pursuant to the provisions of this act, such order of sale may in the discretion of the officer be issued at any time after the seizure of such vessel.

When property to be sold.

§ 16. Within ten days after the service of such order the sheriff shall, unless such order be sooner vacated, proceed to sell the vessel so seized by him, her tackle, apparel and furniture, upon the same notice, in the same manner, and in all

Notice of sale.

PART III.

respects subject to the provisions of law in case of the sale of personal property upon execution.

Proceeds of sale.

§ 17. The sheriff shall return to the officer granting such order his proceedings under the same, and the proceeds of such sale, after deducting his fees and expenses in seizing, preserving, watching and selling such vessel when duly taxed, shall be retained by such sheriff in his hands, to be distributed and paid as hereinafter directed.

Notice of distribution of proceeds.

§ 18. At the time of issuing any such order of sale, the officer granting the same shall order a notice to be published in the same newspaper in which the notice of seizure is required hereby to be published once a week for three weeks, requiring all persons who have any liens upon such vessel by virtue of the provisions of this act, and the master, owner, agent or consignee and all other persons interested in such vessel to appear before him at a day to be therein specified, not less than thirty and not more than forty days from the first publication of such notice, to attend a distribution of the proceeds arising from the sale of such vessel, her tackle, apparel and furniture. The officer may in his discretion direct such distribution to be made before a referee to be appointed by him on notice.

Liens against proceeds of sale.

§ 19. Such proceeds of any sale under the provisions of this act shall, until distributed as herein provided, stand in place of the vessel, and until such distribution any person entitled under this act to enforce a lien against such vessel may enforce the same against such proceeds, in the same manner as is herein provided for enforcing a lien against the vessel herself, and with like effect. Upon the distribution of such proceeds, the various claims exhibited, which are found to be subsisting liens upon such vessel, or the proceeds thereof according to the provisions of this act, shall, with their respective costs, expenses and allowances, be ordered to be paid out of such proceeds in the order of the delivery of the respective warrants to the sheriff. The costs, disbursements and allowances upon such distribution shall be the same as those allowed in civil actions upon a trial.

Costs of distribution

Who may contest claims.

§ 20. At any time before the final distribution of such proceeds the master, owner, agent, consignee or any person having any interest whatever in such proceeds may contest any claim which shall have been exhibited against such vessel or the proceeds thereof.

Statement to be filed with officer.

§ 21. In case of such contest the party making objection to any such claims shall file with the officer a written statement or answer designating the claims he desires to contest, and controverting such of the allegations of the petition exhibiting such claim as he may be able to controvert, and likewise setting up any other matter of defence thereto. Such statement or answer shall be verified by the party presenting the same to the effect that the same is true to the best of his knowledge or belief. A copy thereof shall within

five days from the filing thereof be served upon whose claim it is intended to contest or his attorney; otherwise it shall be deemed abandoned.

§ 22. If such answer do not contain matter in defense of such claim, it may be stricken out on motion of the party who has exhibited any claim against said vessel and the proceeds thereof.

§ 23. The issue between such contestants shall be tried before a judge in like manner as other issues which are provided by law to be tried before a judge, and at such time to be fixed by the officer who issued the warrant; and the same may be referred by such officer to some competent referee, to hear and determine the same in like manner as in civil actions.

§ 24. Either party may have the same right to appeal from the report of such referee or the decision of such judge as in civil actions, and on such appeal the decision of such referee or court, both of law and of fact, may be examined and may be reversed or modified, or a new trial may be ordered. Judgment for costs shall be given in favor of the successful party as in personal actions. The successful party shall be entitled to recover the allowances provided for in the Code of Procedure in such actions.

§ 25. When the amount of all the claims which have been exhibited, and which are found to have been liens upon such vessel at the time of exhibiting the same, shall have been finally determined, the said proceeds shall be distributed by the court as provided in section 10 of this act, on motion of any person interested therein. Any uncontested claims entitled by this act to be paid out of such proceeds prior to the claims which are contested, shall, on motion of the parties interested, be paid out in the order of their respective priorities, notwithstanding any contest with costs; and if at any time it be made known that after payment of all prior uncontested claims and respective costs, and after deducting an amount sufficient to pay all prior contested claims and costs, there will be a surplus of such proceeds applicable to the payment of subsequent uncontested claims. Such claims may be ordered to be paid out of such surplus, with costs.

§ 26. The proceeds of any sale of any vessel under the provisions of this act shall be subject to the direction of the court, and may at any time be invested by such court in accordance with the practice thereof.

§ 27. Whenever any person having a lien against any vessel shall have filed specifications thereof as provided in this act, such lien may be assigned and transferred by a written instrument in writing, duly acknowledged and filed in the same place where the original specifications of such

PART III.

filed; such assignment shall describe the debt intended to be transferred, and specify the date of the filing the specification thereof, and shall state to whom it is intended to transfer it. Such transfer, and the name of the person or persons to whom such lien has been transferred, shall be noted by the clerk opposite the original entry of such lien, and after the filing of such assignment and transfer, but not otherwise, the person to whom such lien has been transferred shall be entitled to enforce the same in like manner as the person who transferred the same could have done.

Further provisions as to discharge of lien.

§ 28. Whenever any specifications of any lien upon any ship or vessel shall have been filed pursuant to the provisions of this act, and no warrant has been issued to enforce the same, any person owning or interested in such ship or vessel may apply to any justice of the supreme court for leave to discharge such lien upon giving bonds therefor. Such application shall be in writing, and shall set forth the amount of the lien claimed to be subsisting and the grounds of defence thereto; it shall also set forth the names of two persons, proposed sureties for such lien, with their respective residences and places of business, which sureties shall, if leave to bond be granted, justify on notice to the person having the lien before the officer granting such leave. Upon presenting such application, with proof that a copy thereof, with at least five days' notice of the time and place of presenting the same, has been served upon the person having such lien, such officer may, if no just cause be shown in opposition thereto, grant leave to bond the said claim.

Discharge of lien.

§ 29. When such leave be given, and upon the execution and delivery to the person having such lien of the bond prescribed in section seven of this act approved by the officer, such officer shall direct that the said lien be marked by the clerk as discharged, and the same shall cease to be a lien upon such vessel.

Distribution of surplus.

§ 30. If after payment of all claims which have been exhibited and been found to be payable out of the proceeds of the sale of any vessel under this act, a surplus thereof remain, such surplus may be distributed by the court to the persons entitled thereto, but such distribution shall not be made until a notice shall have been published specifying the amount of such surplus, proceeds, the names of the persons applying therefor, together with the name of the ship or vessel from which the same arose, and the date of the sale of such vessel. Such notice shall be published in the same manner and for the same time as prescribed in section nine of this act.

Absence or inability of judge.

§ 31. Whenever any proceeding under this act shall have been commenced before any judge, the same and every part thereof may, in the absence or inability of such judge, or by his order to that effect, be continued before any other judge of the same court.

CHAP. VIII.
Sheriff may
be compelled
to return war-
rant.

§ 32. Every sheriff to whom a warrant may have been delivered, may be compelled by any officer having jurisdiction over the proceedings thereon, to return such warrant, with his proceedings thereon, and to pay over moneys in his hands, and to take any steps necessary for the safety of said vessel, pursuant to any order for that purpose, by an order of such officer, and by process of attachment for disobedience thereof, on the application of any person interested therein.

§ 33. Whenever any ship or vessel shall have been run down or afoul of by any other ship or vessel, through the negligence or wilful misconduct of those navigating such other ship or vessel, and shall thereby have sustained damage to the extent of fifty dollars, the owner of the ship or vessel so sustaining damage shall have a lien upon the ship or vessel causing such damage in manner aforesaid, her tackle, apparel and furniture, to the extent of such damage. The master, owner, agent or consignee of the ship or vessel so receiving damage, may enforce the said lien in like manner and with the same effect as in case of other liens created by this act, but such proceedings must be commenced within ten days after the damage shall be done, otherwise such damage shall cease to be a lien upon such ship or vessel.

Lien on
vessel
causing
damage.

§ 34. Title eight, article one of chapter eight, of part third of the Revised Statutes, entitled, of proceedings for the collection of demands against ships and vessels, and all acts amendatory thereof, and also an act entitled an act to extend the provisions of the law relative to proceedings for the collection of demands against ships and vessels, passed eighteen hundred and thirty-one, chapter three hundred and eighteen, are hereby repealed.

Repeal.

§ 35. This act shall not apply to debts contracted before this act shall take effect.

CHAP. 240.

AN ACT for the recovery of demised premises.

PASSED April 12, 1842.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. In case of proceedings under the second subdivision of section twenty-eight, title ten, chapter eight of the third part of the Revised Statutes, if the unexpired term of the lease under which the premises are held, exceeds five years at the time of issuing the warrant upon such proceedings, the lessee, his assigns or personal representatives, may at any time within one year after possession of the demised premises shall have been delivered to the landlord, pay or tender to the lessor, his representatives or attorney, or to the officer who issued the warrant, all rent in arrear to the time of

Rights of
lessees and
mortgagees

PART III.

such payment or tender, and all costs and charges incurred by the landlord—and in such case the premises shall be restored to the lessee, who shall hold and enjoy the same without any new lease thereof, according to the terms of the original demise; and any mortgagee of the lease, or of any part thereof, who shall not be in possession of the demised premises, or any judgment creditor of the lessee who shall within one year after the execution of such warrant pay all rent in arrear, all costs and charges as aforesaid, and perform all the agreements which ought to be performed by the first lessee, shall not be affected by such recovery; and such judgment creditor may file a suggestion of such payment upon the record, and may issue execution for the amount of the original judgment and of such payment.

Repeal.

§ 2. The act entitled “An act to amend the Revised Statutes in relation to summary proceedings to recover possession of demised premises,” passed April 25, 1840, is hereby repealed.

CHAP. 266.

AN ACT to amend the act entitled “An act concerning the sale of real estate by mortgage,” passed May 12, 1837, and to limit its duration, and for other purposes.

PASSED April 18, 1838.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Purchaser
when to
take pos-
session.

§ 1. Whenever a mortgagor, his representative or assigns, have a right of redemption on any sale under a mortgage or decree by virtue of the act entitled “An act concerning the sale of real estate by mortgage,” passed May 12, 1837, the purchaser on such sale shall be entitled to immediate possession of the premises so purchased by him, unless the mortgagor, or some one by such act entitled to redeem the same, shall, within eight days after such sale, give security to such purchaser for the value of the possession and use of the premises, for the prevention of waste therein, and for the peaceable delivery of the same to the purchaser, or his heirs or assigns, at the expiration of one year from the time of such sale, in case such premises shall not be redeemed.

9 Pai., 517; 1 H., 324; 12 How. P. R., 490.

Security to
be given to
purchaser.

§ 2. Such security shall be a bond executed by the party claiming the right to redeem, to the purchaser, his heirs or assigns, in a sufficient penalty, with two good and sufficient sureties, conditioned to deliver up the peaceable possession of the premises to the purchaser, or his heirs or assigns, at the expiration of one year from the time of sale, without having permitted any waste, or done any thing to injure the

value of such premises after such sale, and to pay the value of the use of the premises (ascertained as hereinafter mentioned) at the expiration of the year, provided the premises are not redeemed according to the provisions of said act.

§ 3. In cases of such sales under a decree, the value of the use of such premises, the amount of the penalty of the bond, and the sufficiency of the sureties, shall be ascertained and determined in such manner as the chancellor by rule hath or shall provide or order. But in cases of sales under a mortgage by statute foreclosure without a decree, the penalty of the bond shall be in a sum not less than two hundred dollars, nor less than double the amount of the sum for which such premises were sold; and the value of the use of such premises shall be ten per cent on the purchase money or the sum bid for the same, together with seven per cent on all incumbrances on said premises prior to that under which the same is sold. The sufficiency of the penalty of the bond and the goodness and sufficiency of such surety, shall be determined by the assent of such purchaser, or the approval endorsed on said bond, of a judge of the county courts of the county wherein such sale shall have been made.

Sufficiency
of sureties
how to be
ascertain-
ed.

§ 4. In all cases of sales that have heretofore taken place, where the mortgagor, his personal representative or assigns, by virtue of the act aforesaid have a right of redemption, the purchaser shall be entitled to immediate possession of the premises purchased for want of such bond, unless such bond shall be executed, approved and delivered as aforesaid, within eight days after such purchaser shall have given written notice of the requirements of this act to the person or persons in possession of such premises, or of some part thereof, or if vacant, to the said mortgagor, or his personal representative, and shall have demanded such bond.

Provision
respecting
sales here-
tofore made

§ 5. That the words "mortgagor, his personal representative or assigns," in the first section of the act hereby amended, specifying who may redeem from such sale, shall be held to include each and every person or persons, corporation or corporations, that have or shall have any legal lien on the premises he or they may so claim to redeem. And in case of the redemption of any mortgaged premises from any such sale by any person or persons, corporation or corporations, other than the mortgagor or his personal representative, all the title acquired by the purchaser on such sale, and all rights of other creditor or creditors by him redeemed, shall by such redemption be transferred to and vested in the person or persons, corporation or corporations so redeeming, any provisions in the act hereby amended to the contrary notwithstanding.

Persons or
corpora-
tions who
have a lien
on the
premises.

10 Pai., 311.

§ 6. Creditors having a right to redeem from such sale, shall have such right according to the priority of their claim, (being a subsisting lien thereon,) the creditor having the senior lien shall redeem by paying to the purchaser the sum

Rights of
creditors to
redeem.

PART III.

paid by him, with seven per cent interest thereon, from the time of such sale; and any second or other creditor may redeem the same from such sale and from such redeeming creditor, by paying to him the sum paid by him on such redemption, with seven per cent interest thereon, together with all liens thereon senior to those of such second or other creditor, held, owned or paid by him from whom he redeems, with seven per cent interest thereon; and that no creditor redeeming shall be required to discharge any lien junior to his own, but such redemption shall be subject to all that are senior thereto, under the penalty of having the same redeemed from him by any such senior creditor, without the payment of any lien junior to such senior redeeming creditor.

Evidence of
such rights
to be pre-
sented.

§ 7. To entitle any such creditor to acquire the title to the original purchaser, or to become a purchaser of any other creditor pursuant to the foregoing provisions, he shall present and leave with such purchaser, or the officer or person who made the sale, the evidence of such right required by the sixtieth section of title five, article two, chapter six of the third part of the Revised Statutes, or by section second of the act entitled "An act amending the Revised Statutes in relation to the sales of real estates on executions," passed May 26, 1836, according to the nature of the lien under which he claims to redeem.

Revised
Statutes.

§ 8. That the fourteenth section of title fifteen, chapter eight of the third part of the Revised Statutes be amended, by inserting after the word "assigns," in the third line, the words "or by any other person or persons whatsoever," and by adding at the end of the section, the words "hath heretofore been," so that such section thus amended shall read as follows:

Amended.

"Where the mortgaged premises, or any part of them, shall have been purchased at such sale by the mortgagee, his legal representative, or his or their assigns, or by any other person or persons whatsoever, as herein before provided, the affidavits of the publication and affixing notice of sale, and of the circumstances of such sale, shall be evidence of the sale and of the foreclosure of the equity of redemption, as herein specified, without any conveyance being executed, in the same manner and with the like effect as a conveyance executed by a mortgagee upon such sale to a third person hath heretofore been."

29 B., 302; 27 B., 503; 20 B., 559; 16 B., 352; 13 B., 144.

Repeal Nov.
1, 1888.

§ 9. The act entitled "An act concerning the sale of real estate by mortgage," passed May 12, 1837, is hereby repealed; such repeal to take effect from and after the first day of November next.

CHAP. 342.

AN ACT to reduce the expense of foreclosure
in the court of chancery.

PASSED

*The People of the State of New York, represent
and Assembly, do enact as follows:*

§ 1. It shall be the duty of the chancellor to
short and convenient form for bills for the forecl
gages, so that such bills shall contain such wor
necessary to enable the court to make prop
decrees for the foreclosure of the equity of redem
of the mortgaged premises, and the protection o
persons having interests therein; and instead
prayer for process of subpoena, setting forth the
the writ, it shall be sufficient to insert a clause
praying that the defendants (naming them) may
the chancellor or vice-chancellor and answer th
prayer shall be sufficient to authorize the issuing
to answer of course, without any order for that

§ 2. When a bill for the foreclosure of a mort
taken as confessed, or when the answer put in s
any material matter set forth in the bill, or the
complainant to a decree of foreclosure and sale
gaged premises and payment of his debt, and t
no plea or demurrer to the bill, the several office
named, instead of the fees for their services heret
shall receive for their services the compensatio
and no other fees whatever shall be taxed or dec
the defendant, or demanded or received from him

§ 3. No fees shall be allowed to counsel.

§ 4. Solicitor's fees:

Retaining fee, five dollars.

Drawing the necessary papers and attending t
order for the admission of a next friend, if the cor
an infant, one dollar.

Drawing bill of complaint, three dollars; eng
same to file, one dollar and fifty cents, and for
served upon the adverse party, his guardian or so
necessary, one dollar.

Drawing and engrossing subpoena to appear
fifty cents, every copy to serve, twenty-five ce
more than six copies to be allowed in any one ca

Serving subpoena on each defendant, not exce
any one suit, twenty-five cents.

Furnishing proof of service of subpoena, twenty

Furnishing proof of the absence of defendant,
out of this state, fifty cents.

PART III.

Drawing and engrossing every common order, fifty cents.

Drawing and engrossing final decree, not containing special provisions, two dollars, and if it contain special provisions, three dollars.

Drawing bill of costs, with a copy for taxation, one dollar, and for every copy actually served upon the opposite party, including service and notice of taxation, fifty cents.

Notice of the object of the suit and service upon each defendant, twenty-five cents; but no more than six such notices to be allowed in any suit.

Notice of the pendency of the suit to be filed in the office of the county clerk, twenty-five cents.

See Laws of 1841, ch. 237.

[Section 5 repealed by Laws of 1841, ch. 237.]

Fees of
register,
assistant
register and
clerks.

§ 6. Fees of the Register, Assistant Register and Clerks :

Filing all the papers and entering an order for the admission of a next friend or guardian, twenty-five cents.

Entering every common order, twelve and a half cents.

Entering final decree, twenty-five cents.

Enrolling a decree, one dollar.

Every other service required of the register, assistant register or clerk, shall be performed without fee or reward.

§ 7. The chancellor shall make such general rules as he may deem reasonable for disposing of causes for foreclosure of mortgages, so as to dispense with entering the same on the calendar, or bringing the same to hearing whenever the same can be done with safety to the parties having interests in the lands mortgaged.

Notice to be
filed in
county
clerk's
office.

§ 8. Whenever a bill for the foreclosure of a mortgage shall be filed, it shall be the duty of the complainant, or his solicitor, to file in the office of the clerk of the county in which the land mortgaged shall be situated, a notice of the pendency of the suit; which notice shall contain,

Contents.

1. The names of the parties to the suit, and the object of the suit :

2. The date of the mortgage, by whom and to whom executed :

3. The time when the mortgage was recorded, and the office in which it was recorded :

4. A description of the land mortgaged, so far as to show the town, village or ward, and the county in which such land is situated; the number of the lot, if any, and the quantity of the land if the same is stated in the mortgage. Each county clerk shall place in an index to be kept in his office, such references to such notices, as will enable all persons interested to search his office for such notices without inconvenience.

16 B., 266; 5 J. R., 35; 1 H., 107; 11 Pai., 629; 9 Ab., 66.

Decree of
foreclosure
when to be
made.

§ 9. No decree of foreclosure and sale of lands mortgaged, shall be made unless proof shall be given in such manner as shall be required by the court that notice of the pendency

of the suit has been filed as is required in the ing section, at least forty days before such de made.

As amended by Laws of 1844, ch. 346; 11 Pai., 400.

§ 10. Whenever any person claiming any right of redemption by or under any judgment or decree to any mortgage, shall not be made a party to the bill for the foreclosure of such mortgage, such person may be made a party to such suit, at such time, and upon such terms and conditions as the court shall deem just and proper, and any such person without being made a party to the suit may make application to the court by petition for the sale of any surplus money arising from the sale, or to the sale and for a resale, in the same manner as if he were a party to the suit.

§ 11. It shall not hereafter be necessary to furnish proof of the regularity of the proceedings in any suit for the foreclosure of a mortgage.

§ 12. The eighth section of the fifteenth title of chapter of the third part of the Revised Statutes is hereby amended by repealing the latter clause of the said section, so that the said section as hereby amended is as follows:

“§ 8. Every sale pursuant to a power as aforesaid, and conducted as herein prescribed, made to a purchaser in good faith, shall be equivalent to a foreclosure, and shall bind the decree of a court of equity, so far only as to be a bar to the claim of all claim or equity of redemption of the mortgagor, his heirs and representatives, and of all persons claiming under him or them, by virtue of any title subsequent to the said sale.”

§ 13. Clerks of counties and registers of cities, towns and villages, shall receive for searching and certifying the title of conveyances upon real estate, ten cents for each conveyance, and for each incumbrance certified by him, instead of fees now provided by law, provided that such fees shall in no case amount to more than fifty cents nor more than five dollars.

CHAP. 346.

AN ACT in relation to the foreclosure of mortgages.

PASSED MAY 18, 1844.

The People of the State of New York, represented by the Senate and Assembly, do enact as follows:

§ 1. The third section of the fifteenth title of chapter of the third part of the Revised Statutes is hereby amended, by adding thereto the following subdivision:

3. By serving a copy of such notice at least four days prior to the time therein specified for the sale, upon the mortgagor or his personal representatives, and upon the

PART III.

grantees and mortgagees of the premises whose conveyance and mortgage shall be upon record at the time of the first publication of the notice, and upon all persons having a lien by or under a judgment or decree upon the mortgaged premises, subsequent to such mortgage, personally, or by leaving the same at their dwelling house in charge of some person of suitable age, or by serving a copy of such notice upon said persons at least twenty-eight days prior to the time therein specified for the sale, by depositing the same in the post office, properly folded and directed to the said persons at their respective places of residence.

29 B., 302; 20 B., 18; 16 B., 1, 266, 349; 11 B., 192; 9 B., 278; 9 Ab., 66; 12 How. P. R., 490

§ 2. The tenth section of the fifteenth title of the eighth chapter of the third part of the Revised Statutes, is hereby amended so as to read as follows:

Affidavit of
publication
a.c. by
whom to be
made.

§ 10. An affidavit of the publication of such notice of sale and of any notice of postponement may be made by the printer of the newspaper in which the same was inserted, or by his foreman or principal clerk; and an affidavit of the affixing of a copy of such notice on the outward door of the court house, may be made by the person who affixed the same, or by any other person who saw such notice so posted during the time required, and an affidavit of the affixing a copy of such notice in the said books so to be provided and kept by the clerk pursuant to the first section of this act, may be made by the county clerk, or by any other person who saw such notice so affixed during the time required; and an affidavit of the serving a copy of such notice on the persons entitled to service thereof, may be made by the persons who served the same.

As amended by Laws of 1857, ch. 308; 20 B., 559; 16 B., 347.

§ 3. The first subdivision of the fourth section of the fifth title of the tenth chapter of the third part of the Revised Statutes, is hereby amended so as to read as follows:

Fees.

1. For drawing and copies of the advertisement of foreclosure and sale, affidavits of the publication, posting and serving thereof, and of the circumstances of the sale and the deed thereof, the same allowance as is herein made to attorneys in the supreme court, for the drawing and copies of pleadings, and one dollar for serving each copy of the notice of sale required by law to be served.

6 How. P. R., 493.

§ 4. The eighth section of the fifteenth title of the eighth chapter of the third part of the Revised Statutes, as amended by the act entitled "An act in relation to proceedings in the court of chancery against absent, concealed or non-resident defendants, unknown owners in partition, and to the foreclosure of mortgages by advertisement," passed April 12, 1842, is hereby amended so as to read as follows:

CHAP. VIII.
Effect of a
sale pursuant to a
power.

§ 8. Every sale pursuant to a power as aforesaid and conducted as herein prescribed, hereafter made to a purchaser in good faith, shall be equivalent to a foreclosure and sale under the decree of a court of equity, so far only as to be an entire bar of all claim or equity of redemption of the mortgagor, his heirs and representatives, and of all persons claiming under him or them, by virtue of any title subsequent to such mortgage, and also of any person having a lien by any judgment or decree upon the land or any part thereof contained in such mortgage subsequent to such mortgage, and of every person having any lien or claim by or under such subsequent judgment or decree, who shall have been served with notice of said sale as required by law.

2 D., 344; 1 H., 107; 5 H., 272; 6 H., 65.

CHAP. 305.

AN ACT for the better security of mechanics and others erecting buildings and furnishing materials therefor, in the several cities in this State, (except the city of New York), and in the villages of Syracuse, Williamsburgh, Geneva, Canandaigua, Oswego and Auburn.

PASSED May 7, 1844.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. Any person who shall hereafter by virtue of any contract with the owner thereof, or his agent, or any person who in pursuance of an agreement with any such contractor, shall, in conformity with the terms of the contract with such owner or agent, perform any labor or furnish materials in building, altering or repairing any house or other building, or appurtenances to any house or other building, in the several cities in this state, (except the city of New York,) and in the villages of Syracuse, Williamsburgh, Geneva, Oswego, Auburn and Canandaigua, shall have a lien for the value of such labor and materials, upon such house or building and appurtenances, and upon the lot of land on which the same stand, to the extent of the right, title and interest at that time existing of such owner, in the manner and to the extent hereinafter provided; but the aggregate of all the liens authorized by this act to be created, for the labor performed and materials furnished in building, altering or repairing any house, other building or appurtenances, shall not exceed the price stipulated in the contract with such owner or his said agent to be paid therefor; and such owner shall not be obliged to pay for or on account of such house, building or appurtenances, any greater sum or amount than the price so stipulated and agreed to be paid therefor, in and by such contract.

Value of the
labor and
materials
to be a lien
on building.

8 N. Y., 383; 12 W., 373; 2 E. D. S., 675.

PART III.
Specifica-
tion of the
work to be
made.

§ 2. The person performing such labor or furnishing such materials, shall cause to be drawn up specifications of the work by him contracted to be performed, or materials to be furnished, and stating the price or prices agreed to be paid therefor, and shall file them, or if there be a contract, a true copy thereof, if the same be in writing, in the office of the clerk of the county in which the city or village may be situated, and serve a notice thereof personally on such owner, or his said agent, within twenty days after the making such contract, or after commencing such labor, or the furnishing of said materials. The said clerk shall provide and keep a book, which shall be called "The Mechanics' and Laborers' Lien Docket," in which he shall enter alphabetically, the names of the owners, and opposite to them the names of the contractors or laborers, or other persons claiming a lien, and the lot or street on which such work is to be done, or materials furnished, and the time of filing such specification or copy of such contract; and the said clerk shall in each case receive the sum of eighteen cents.

1 E. D. S., 654.

Lien when
to take
effect.

§ 3. The lien so created by this act shall take effect from such filing and such service of the said notice, and shall continue in full force for the space of one year thereafter; such lien may be discharged on such docket at any time by said clerk, on the production to and filing with him of a certificate signed by the contractor, laborer or other person claiming such lien, that the claim for which such lien was created is satisfied and discharged; which certificate shall be acknowledged or proved in the same manner as deeds are required to be acknowledged or proved to entitle the same to be recorded.

Lien when
to be en-
forced.

§ 4. Any owner, and any contractor or laborer, or any person furnishing materials, in pursuance of any contract made by such contractor with such owner, or his said agent therefor, may, after such labor has been performed, or materials furnished, enforce or bring to a close such lien, by serving or causing a notice to be served personally on such owner or his agent, contractor or laborer, or person furnishing materials, requiring him to appear in the court of common pleas of the county, or in a justice's court of the city or village in the county in which such building is situated, either in person or by attorney, at a time certain on some day to be specified in such notice, not less than twenty days from the service thereof, and submit to an accounting and settlement in such court of the amount due or claimed to be due under such contract for the labor thus performed, or the materials thus furnished.

Bill of par-
ticulars to
be served.

§ 5. At the time of, or within ten days after the service of such notice, a bill of particulars of the amount claimed to be due, shall be served personally on such owner, and accompanying the same shall be a notice to produce a bill of particulars

of any offset which may be claimed to the same, within ten days thereafter, which shall be served in like manner.

§ 6. In case such contractor, laborer, or person furnishing materials, shall not appear and produce his claim, as specified in sections four and five, he shall forever lose the benefit and be precluded of his said lien; and in case such owner shall not appear in pursuance of the requirements of the said sections, at the time and place specified in such notice, then his default may be entered in the book of common rules of the said court of common pleas, or by the said justice's court, and thereupon a writ of inquiry and inquisition may issue to the sheriff of said county, in which such city or village may be situated, to be executed, or the amount of such claim shall be assessed by the said justice's court, as the case may be; and judgment shall be entered upon the same, and execution shall issue for the enforcement of the said claim so adjudicated and established, in the same manner as in cases upon judgments in such courts in actions of assumpsit.

Provision
in case of
neglect.

§ 7. On the appearance of both parties in pursuance of the above requirements, issue shall be joined upon the claims made, and notices of set-off served, and the same may be noticed for trial and put upon the calendar of said court by either party, and shall be governed, tried, and the judgment therein enforced in all respects in the same manner as upon issues joined and judgments rendered in actions of assumpsit in the said court.

Issue when
to be join-
ed.

§ 8. Costs shall be allowed upon the same principles and by the same rules in such proceedings as they are now allowed by statute in an action of assumpsit, and shall form a part of the judgment recovered in the same.

Costs.

§ 9. Any person performing such labor, or furnishing such materials in pursuance of any agreement made by him "with the original contractor, with such owner, or his said agent," who shall have done the acts prescribed by the second section of this act, to create a lien therefor, shall have a lien for only such labor as shall be performed, and for only such materials as shall be furnished subsequently thereto.

Lien for
labor and
materials.

§ 10. Any person performing such labor, or furnishing such materials, as mentioned in the preceding section, in pursuance of any agreement made by him, "with the original, contractor, with such owner, or his said agent," within thirty days after such labor has been performed, or such materials have been furnished, and claiming to have a lien therefor by virtue of this act, shall produce and deliver to such owner, or his said agent, a statement in writing, signed by himself and the said contractor, specifying how much is due to such person for such labor done, or materials furnished, or in default of so doing shall take the necessary proceedings against such contractor, to procure an accounting and settlement of the amount due or owing for such labor or materials, which proceeding shall be conducted in all

Statement
in writing
to be made.

PART III.Amount to
be specified.

respects as prescribed by, and be subject to all the provisions contained in sections four, five, six, seven and eight of this act; and in case such person shall fail to produce and deliver such statement, or take the necessary proceedings within the said period of thirty days, to compel such accounting and settlement between himself and such contractor, or shall fail to prosecute the proceedings so to be taken with effect, and without delay to a final judgment, he shall forever lose the benefit and be precluded of his said lien. The amount of any judgment which may be recovered by such person against such contractor, or the amount which, by their written statement, to be signed by them as aforesaid, shall be specified to be due to such person from such contractor, shall be paid by such owner, or his said agent, to such person; and when so paid shall be deemed to be a payment of such amount by the said owner, on the contract made with such owner, or his said agent. And if such owner, or his said agent, shall refuse or neglect to pay such sum, after being served with such statement, or a transcript of the docket of such judgment, for ten days after being requested so to do, the clerk of the county, on having filed with him a duplicate copy of said statement, with the affidavit of such person that it is a true copy thereof, and of the delivery thereof to such owner, as required by this section, or on having filed with him a transcript of the docket of such judgment, and an affidavit of a demand of the said owner, or his said agent, ten days prior thereto, of the amount thereof, and of his refusal or neglect to pay, may issue an execution in favor of such person against such owner, in form as upon a judgment recovered in assumpsit, on the day of the attaching of such lien, reciting that such execution is issued pursuant to the tenth section of this act, which execution shall be subject in all respects to the jurisdiction and control of the court of common pleas of said county to make such order in respect to the same as shall be just between the parties, according to their rights as defined and regulated by this act. For such execution the clerk shall be entitled to a fee of one dollar, which shall be collected under such execution, in addition to the amount therein directed to be collected thereby, and the fee prescribed by law for making such collection.

Liens when
barred.

§ 11. Any person who shall furnish materials or perform labor in the erecting, altering or repairing any house or other building or appurtenances, may certify to the owner or his agent, at any time previous to or during the progress of the work, that such person will discharge the owner or his agent from any liability as to liens, and such certificate, executed by himself in presence of a subscribing witness, shall be conclusive upon such person in barring him from the benefit of a lien by virtue of this act.

Is this act repealed by Laws of 1854, chapter 402, § 24?

CHAP. 235.

AN ACT in relation to liens created by the several acts for the better security of mechanics and others erecting buildings and furnishing materials therefor.

PASSED May 18, 1845.

The People of the State of New York, represented in Senate and Assembly, do enact as follows :

§ 1. The docket of liens and of judgments filed and docketed with the county clerk of any county, under chapters two hundred and twenty, and three hundred and five of the Laws of 1844, shall be subject to the control and jurisdiction of the court of common pleas in such county, in the same manner as judgments recovered in said court.

Jurisdiction of courts of common pleas.

CHAP. 402.

AN ACT for the better security of mechanics and others erecting buildings in the counties of Westchester, Oneida, Cortland, Broome, Putnam, Rockland, Orleans, Niagara, Livingston, Otsego, Lewis, Orange and Dutchess.

PASSED April 17, 1854; three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows :

§ 1. Any person who shall hereafter perform any labor in erecting, altering or repairing any house, building, or the appurtenances to any house or building in either of the counties mentioned in the title of this act, and every resident of either of said counties of Westchester, Oneida, Cortland, Broome, Putnam, Rockland, Orleans, Niagara, Livingston, Otsego, Lewis, Orange and Dutchess, who shall furnish any materials therefor, shall, on filing with the town clerk of the town in which the property is situated the notice prescribed by the fourth section of this act, have a lien for the value of such labor and materials upon such house or building and appurtenances, and upon the lot, parcel or farm of land upon which the same shall stand, to the extent of the right, title and interest of the owner of the property existing at the time of filing the said notice.

Counties in which lien is to attach.

20 N. Y., 247; 19 N. Y., 234; 9 N. Y., 435; 11 B., 9; 4 E. D. S., 734; 3 E. D. S., 632; 2 E. D. S., 543, 583, 594, 616, 662; 681; 1 E. D. S., 725; 1 Du., 675; 17 How. P. R., 449; 7 How. P. R., 350; 6 Ab., 99; 4 Ab., 263; 2 Ab., 93, 104.

[Most of the cases cited to this statute have arisen under local laws, but they establish principles applicable to this also.]

By Laws of 1858, ch. 204, this act is made applicable to the whole state except New York and Erie counties.

PART III.
Labor performed by
contractors.

§ 2. Whenever the labor performed and materials furnished shall be upon the credit of any contractor who shall have made a contract therefor with the owner of the property, or upon the credit of any sub-contractor, or the assignee of any contractor, the provisions of this act shall not oblige the owner of the property to pay for or on account of any labor performed, or materials furnished for such house, building or appurtenances, any greater sum or amount than the price stipulated and agreed to be paid therefor in and by said contract, except as in the next section provided.

13 N. Y., 70; 7 H., 525; 4 H., 193; 12 W., 373; 4 E. D. S., 727; 3 E. D. S., 660; 2 E. D. S., 560, 693; 1 E. D. S., 625, 647, 652, 658, 692, 717.

Collusion.

§ 3. If the owner of any building altered or repaired by contract shall pay to any person any money on such contract by collusion, for the purpose of avoiding the provisions of this act, or before the right of any claimant to file a notice of lien has expired, or in advance of the terms of any contract, and the amount still due the contractor or his assignee after such payment has been made, shall be insufficient to satisfy the demands made in conformity to the provisions of this act, the owner shall be liable to the amount that would have been due and owing to said contractor or his assignee at the time of the filing of the notice mentioned in the first section of this act, in the same manner as if no such payment had been made.

1 E. D. S., 687, 692.

Notice of
claim to be
filed with
town clerk.

§ 4. Within thirty days after the performance and completion of such labor, or the final furnishing of such materials, the contractor, sub-contractor, laborer or persons furnishing materials, shall serve a notice in writing upon the town clerk of the town where the property is located, specifying the amount of the claim, and the person against whom the claim is made, the name of the owner of the building, and if in a city or village, the situation of the building by street and number, if the street be known.

Lien docket

The town clerk shall enter the particulars of such notice in a book, to be kept in his office, to be called the "Lien Docket," which shall be suitably ruled in columns, headed "claimants," "against whom claimed," "owners," "buildings," "amount claimed," and the date of the filing of the notice, hour and minute, what proceedings have been had. The names of the owners and persons against whom the claims are made shall be entered in said book, in alphabetical order. A fee of ten cents shall be paid to said clerk on filing such lien, and no lien shall attach to said land, buildings or appurtenances, unless such notice be served and filed by said clerk; and said notice, when so filed, shall thereafter operate as an incumbrance upon said property.

20 N. Y., 247; 3 E. D. S., 621, 657, 666; 1 E. D. S., 654, 687; 4 Ab., 432, 472; 3 Ab., 475.

CHAP. VIII.
Proof of
value of
labor or
materials.

§ 5. Any person performing labor, and every resident of said counties furnishing materials, in availing himself of the provisions of this act, shall, upon the trial or at the assessment of damages, produce evidence to establish the value of such labor or materials, and that the same was performed or used by the said owner or his agent, original contractor or assignee of such contractor in the erection, altering or repairing of such house, building or appurtenances.

2 E. D. S., 662; 1 E. D. S., 668, 681, 722.

§ 6. Any contractor, sub-contractor, or laborer performing any work, or assignee thereof, and any resident of said county, furnishing any materials as above provided, may, after such labor has been performed, or materials furnished, and the service of the notice required by the first section of this act, bring an action in the supreme court in the county in which the property is situated, or in the county court of said county, when the amount exceeds fifty dollars, to enforce said lien, which said action shall be commenced by serving a notice containing a statement of the facts constituting the claim and the amount thereof on the owner of the property, or his agent, requiring the said owner to appear in person or by attorney within thirty days after such service, and answer the same, and serve a copy of such answer, together with a notice of any set-off that he may have on the claimant or his attorney; or in default thereof, that the claimant will take judgment against the said owner for the amount claimed to be due for the labor performed or the materials furnished, with interest thereon and costs; and for the purpose of more effectually transacting the business contemplated by this act, said supreme court and county court shall be deemed to be always open.

Action for
labor and
materials.

19 N. Y., 440; 29 B., 631; 2 E. D. S., 577; 1 E. D. S., 687, 699, 719; 17 How. P. R., 449; 7 How. P. R., 350.

§ 7. Within thirty days after the service of said notice and bill of particulars, the defendant shall personally serve the claimant or his attorney with a copy of his answer and notice of set-off, if any he has, duly verified by the oath of the owner, his agent or contractor, to the effect that the same is in all respects true, or his default may be entered and judgment taken and enforced as hereinafter provided.

Answer and
notice of
set-off.

1 E. D. S., 691; 8 How. P. R., 199.

§ 8. When the amount of the lien claimed is for one hundred dollars or under, the claimant may commence such action in a justice's court of the town in which the building is located, by serving a notice upon the owner or his agent anywhere within this state, requiring such owner to appear before a justice of the town in which the property is situated, which said notice shall contain a statement of the facts constituting the claim and the amount thereof, and shall require such owner to appear before said justice in person or by attorney at a time certain, not less than thirty days after such service,

Action,
when com-
menced in
justice's
court.

PART III.

and answer the same, or in default thereof, that the claimant will take judgment against such owner for the amount so claimed to be due, with interest thereon and costs.

4 E. D. S., 724; 2 E. D. S., 639.

Notice, how
served.

§ 9. In case the said notice cannot be served personally on such owner or his agent, by reason of absence from the state, or being concealed therein, then such service may be made by leaving a copy of such notice at the last place of residence of said owner and publishing a copy thereof for three weeks successively in a newspaper published in the county where the property is situated; and in case of the service of such notice by publication, then the said thirty days shall commence to run from the date of the first publication of said notice.

Bill of par-
ticulars.

§ 10. At the time of the service of said notice, as hereinbefore directed, a bill of particulars of the amount claimed to be due from such owner, his contractor or sub-contractor, verified by the oath of the claimant or his attorney to the effect that the same is true, shall be served as aforesaid upon such owner or his agent, except, however, that such bill of particulars need not be published with such notice.

Judgment
for not
appearing.

§ 11. In case said owner shall not appear as required in and by the notice given in pursuance of the sixth and eighth sections of this act, then, on filing with the county clerk when the action to enforce the claim is brought to the supreme court or county court, or with the justice when the action is before said justice, an affidavit of the service of such notice and bill of particulars, and the failure of the owner of the property to appear as therein required, the amount of such claim may be assessed by the said county clerk, or by the court or justice, as the case may be, and upon the assessment of damages as aforesaid, judgment shall be entered upon the said assessment, establishing the amount of said lien with the costs, and execution shall thereupon issue for the collection and enforcement of said claim, so adjudicated and established, in the same manner as executions upon other judgments in said courts in actions arising on contract for the recovery of money only, except that the execution shall direct the officer to sell the right, title and interest which the owner had in the premises at the time of filing the notice prescribed by the first section of this act.

1 E. D. S., 671.

Actions
how tried
on issue
joined.

§ 12. On the appearance of both parties before the justice, the owner shall put in an answer, in writing, duly verified with a bill of particulars of his set-off (if any) annexed, and the issue formed by the service of the notice and bill of particulars on the part of the claimant, and the answer and bill of particulars of set-off on the part of the owner, shall be tried and governed by the same rules as other issues in justices' courts, and the judgment therein shall be enforced, if for the

claimant, as provided by the eleventh section of this act, and if for the owner, as in other actions arising on contract.

12 W., 873; 4 E. D. S., 721; 1 E. D. S., 625.

§ 13. When the action is brought in the supreme court, or in the county court, the issue shall be formed by the service of the notice and the bill of particulars on the part of the claimant, as hereinbefore directed, and the owner's answer duly verified, with a bill of particulars of set-off (if any) annexed to said answer. Issue, how joined.

§ 14. At any time after the issue shall be so joined in the supreme court or county court, and at least ten days before the commencement of the court, the same may be noticed for trial and put upon the calendar of said courts by either party furnishing the clerk of the court with a note of issue, as now required in other actions, and the action thereafter shall be governed, tried, in all respects, as upon issues joined and judgment rendered in other actions arising on money demands upon contracts in said courts, and the judgment thereupon shall be enforced, if for the claimant, as provided by the eleventh section of this act, and if for the owner, as in other actions arising on contract. Notice of trial.

§ 15. Whenever a judgment shall be rendered against the owner, and in favor of any laborer or person furnishing materials, and the owner has funds in his possession due to the contractor, the costs of the proceeding shall be deducted from such funds, unless otherwise directed by the court in which the action is brought. Costs.

3 E. D. S., 648; 2 E. D. S., 644; 4 Ab., 262; 2 Ab., 364.

§ 16. Costs and disbursements shall be allowed to either party upon the principles and by the same rules in such proceedings as they are now allowed by law in actions arising on contract, and shall be included in the judgment recovered in the same; and the expenses incurred in serving said notice upon the owner by publication may be allowed in justices' courts and added to the amount of costs now allowed in said courts. Rules for granting costs and disbursements.

§ 17. A transcript of every judgment rendered under this act, headed "lien docket," shall be furnished by the clerk of the county where rendered and docketed to the successful party, who may file the same with the county clerk of any other county, and the same shall thereafter be a lien on the real property in the county where the same is filed and docketed of every person against whom the same is rendered, in like manner and to the same extent as in other actions for the recovery of money arising on contract, where the judgment is against the claims, and the town clerk shall enter the word "discharged" under the last head in his lien docket, on receiving a transcript from the county clerk or justice that judgment has been rendered against the claimant. Transcript of judgment.

PART III.
Notice to
present
claims.

§ 18. Such owner or his agent may at any time give public notice, in the same manner as notice is required to be given for the sale of real estate by virtue of an execution, to all persons having claims under any of the provisions of this act, against such building, land or appurtenances, at the time of the date of publishing such notice, to present the same, with vouchers in support thereof, to any justice of the peace in the town where such building is situated, on or before a certain hour or day to be specified in said notice, and to be at least six weeks from the first publication; and in case of the failure of such persons to present their claims, as required in and by said notice, each and every person so failing shall forever lose the benefit and be precluded of the said lien.

Proceeding
when
owner is
proceeded
against by a
contractor.

§ 19. Whenever such owner or his agent shall be proceeded against by a contractor, pursuant to the provisions of this act, it shall be lawful for him to give the notice prescribed by the preceding section, and present as a set-off all claims and liens thereupon presented and established; and the justice before whom or a judge of the court in which the proceedings shall be commenced may, upon the request of the owner or his agent, grant a stay of proceedings sufficient to enable the owner to give such notice and call in all such claims, which said claims, if established and allowed by the justice or court, shall be a set-off to such contractor's claim to the amount so allowed.

Continu-
ance of lien

§ 20. Every lien created under the provisions of this act shall continue until the expiration of one year, unless sooner discharged by the court or some legal act of the claimant in the proceedings, but when a judgment is rendered therein, and docketed with the county clerk within said year, it shall be a lien upon the real property of the person against whom it is obtained to the extent that other judgments are now made a lien thereon.

3 N. Y., 305; 29 B., 631; 17 How. P. R., 449; 4 E. D. S., 734; 6 Ab., 99.

Appeal.

§ 21. After a judgment shall have been rendered in pursuance of the provisions of this act, either party may appeal therefrom in the same manner, and within the time appeals may now be taken in actions for the recovery of money arising on contract; and said appeal shall be thereafter heard, governed and determined upon the same principles and by the same rules that appeals in said actions are now heard, governed and determined, with like costs and disbursements, and the judgment thereon enforced in the same manner as judgments on appeals are now enforced and collected.

4 E. D. S., 719.

Priority of
lien.

§ 22. The liens created and established by virtue of the provisions of this act shall be paid and settled according to the priority of the notice filed with the town clerk, as directed by the fourth section hereof.

Liens, how
discharged.

§ 23. All liens created by this act may be discharged as follows:

1. By filing with the town clerk a certificate of the claimant, or his successors in interest, acknowledged or proved in the same manner as a conveyance of real estate, stating that the lien has been paid or discharged; or,

2. By depositing with the justice or clerk of the courts a sum of money equal to double the amount claimed, which money shall be thereupon held subject to the determination of the lien; or,

3. By an entry of the town clerk made in the book of liens, that the proceedings on the part of the claimant have been dismissed by the court in which it is brought, or a judgment rendered against the said claimant; or,

4. By an affidavit of the service of a notice from the owner, or his agent, attorney, contractor, or sub-contractor to the claimant, requiring such claimant to commence an action for the enforcement of said lien within twenty days after service of said notice, and the failure of said claimant to commence an action as aforesaid.

4 E. D. S., 734; 2 E. D. S., 535; 6 Ab., 99.

§ 24. All acts heretofore passed for the better security of mechanics, and others erecting buildings and furnishing materials in either of the above counties, are hereby repealed; but this act shall not be so construed as to affect, enlarge, invalidate, or defeat any lien or right to a lien now existing, or any proceeding to enforce such liens now pending by virtue of the provisions of the acts hereby repealed. Repeal.

CHAP. 204.

AN ACT to extend the provisions of the act entitled "An act for the better security of mechanics and others erecting buildings in the counties of Westchester, Oneida, Cortland, Broome, Putnam, Rockland, Orleans, Niagara, Livingston, Otsego, Lewis, Orange and Dutchess," to all the counties of this state, except the city and county of New York and the county of Erie.

PASSED April 14, 1858.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. All the provisions of the act entitled "An act for the better security of mechanics and others erecting buildings in the counties of Westchester, Oneida, Cortland, Broome, Putnam, Rockland, Orleans, Niagara, Livingston, Otsego, Lewis, Orange and Dutchess," passed April seventeenth, eighteen hundred and fifty-four, are hereby extended and declared to be applicable to all the counties of this state except the city and county of New York and the county of Erie.

Act extended to all the state.

§ 2. All acts and parts of acts inconsistent with this act are hereby repealed. Repeal.

CHAP. 247.

AN ACT to provide for the Registry of Liens and Incumbrances upon boats and crafts navigating the canals of this state.

PASSED April 15, 1858; three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Liens to be registered in office of auditor.

§ 1. Any person having any lien or incumbrance on any canal boat, steam tug, scow or other craft navigating the canals of this state, by a chattel mortgage duly filed, may make a statement in writing setting forth the nature of his claim, the time when the same arose, the manner in which it originated, and the amount of such lien or incumbrance; and may annex thereto an affidavit made by himself or his agent or attorney, that the said statement is correct, and the claim just and true, and file the same in the office of the auditor.

Auditor's duty.

§ 2. It shall be the duty of the said auditor, on the receipt of the said statement, to file the same in his office, and to enter the substance in a book to be provided for that purpose, and the amount, if any, claimed to be due, which book shall always, during office hours, be open for the inspection of all persons desiring to examine the same.

Preference of liens.

§ 3. All claims and liens by chattel mortgage, a statement of which shall be filed as herein provided, shall from the time of such filing have preference and priority over all other claims and liens, in the same manner and to the like extent of claims and liens arising on chattel mortgages filed and entered in towns where the mortgagor resides, but shall not have any priority over existing liens and claims.

Fees for filing.

§ 4. The auditor shall charge for filing the said statement and making the entry thereof as herein provided, the sum of fifty cents, and he shall not be obliged to file or enter the same until such sum is paid.

Statement evidence.

§ 5. Any statement made and filed as herein provided, and copies thereof duly certified by the auditor in the manner required by law, may be read and used as evidence in all courts of justice.

CHAP. 446.

AN ACT for the protection of boarding house keepers.

PASSED April 16, 1860.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Keepers of boarding houses may

§ 1. The keeper of a boarding house shall have the same lien upon and right to detain the baggage and effects of any

boarder, for the amount which may be due for board by such boarder, to the same extent and in the same manner as innkeepers have such lien and such right of detention.

CHAP. IX.
detain baggage for money due for board.

§ 2. This act shall not affect the law in regard to keepers of emigrant boarding houses.

CHAPTER IX.

Other Remedies.

CHAP. 240.

AN ACT in relation to writs of habeas corpus and certiorari.

PASSED April 22, 1837.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. When application shall be made to the supreme court, to the chancellor, or to any one of the justices of the supreme court for a writ of habeas corpus or certiorari, pursuant to the second article of title one, chapter nine of the third part of the Revised Statutes, in cases where the prisoner is confined in a county other than where such court shall then be held or officer reside, such court may in its discretion and such officer may in his discretion make such writ returnable before some other officer authorized to issue such writ in the county where the prisoner may be confined.

Writs how to be made returnable in certain cases.

§ 2. The notice required by the 47th section of said title, shall be given to the district attorney of the county in which the person prosecuting the writ shall be detained, and no notice to any other district attorney shall be necessary.

Notice to district attorney

5 H., 164.

CHAP. 270.

AN ACT in relation to special proceedings.

PASSED April 15, 1854.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. An appeal may be taken to the general term of the supreme court or the superior court or court of common pleas of the city of New York, from any judgment, order or final determination made at a special term of either of said courts in any special proceeding therein; such an appeal, however, shall not stay the proceedings unless the court, or a judge

Appeals may be taken to general term.

PART III.

thereof, so order, which order may be upon such terms, as to security or otherwise, as may be just; such security not to exceed the amount required on an appeal to the court of appeals.

12 N. Y., 406; 26 B., 176; 19 B., 657; 14 How. P. R., 511; 12 How. P. R., 97; 10 How. P. R., 168; 5 Ab., 272; 2 Ab., 368.

Under the
code.

§ 2. Sections three hundred and twenty-seven, three hundred and twenty-nine, three hundred and thirty, and three hundred and thirty-two of the Code of Procedure shall apply to appeals in special proceedings.

Costs
thereon.

§ 3. In special proceedings, and on appeals therefrom, costs may be allowed in the discretion of the court, and when allowed shall be at the rate allowed for similar services in civil actions; and all appeals heretofore had or taken, and undetermined in special proceedings, shall be as valid and effectual as though had or taken under the provisions of this act.

CHAP. 262.

AN ACT to relieve municipal corporations from giving security on appeal, and to relieve them from payment of costs in certain cases.

PASSED April 12, 1859.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Appeals
valid.

§ 1. All appeals by municipal corporations from the judgment or decree of any court of this state, shall be valid to stay proceedings on such judgment or decree, without security or undertaking being given, unless the court in which such judgment or decree is rendered shall otherwise direct; and in such case an undertaking executed in their official capacity, by either the mayor, comptroller or counsel to the corporation, in the name and on behalf of said corporation, shall be valid for purpose of such appeal, and shall bind said corporation to the performance of the conditions of said undertaking.

Claims to
be pre-
sented to
chief fiscal
officer, be-
fore they
can be
recovered.

§ 2. No costs, fees, disbursements or allowance shall be recovered or inserted in any judgment against municipal corporations, unless the claim upon which such judgment is founded shall have been presented for payment to the chief fiscal officer of said corporation, before the commencement of an action thereon.

CHAP. 174.

AN ACT in relation to proceedings upon mandamus.

PASSED April 8, 1859; three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. The court of appeals shall have power and it shall be its duty, to hear and determine all cases now pending in said court, upon writs of error heretofore brought, to review the determination of the supreme court in awarding or refusing to award a peremptory mandamus, in the same manner as if such cases had been brought into said court of appeals by appeal under the provisions of the Code of Procedure.

Duty of court of appeals in certain cases.

§ 2. The court of appeals shall have power to allow any party to any proceedings upon mandamus, heretofore brought into said court by writ of error, to amend his proceedings so as to make them conform to proceedings on appeal, upon such terms as shall be just, in the same manner as defective proceedings on appeal may, by existing laws, be amended; and thereafter the said court may proceed and render judgment in said cases in the same manner and with like effect as if an appeal had originally been brought to renew said determination.

Parties may amend proceedings.

§ 3. The provisions of the Code of Procedure in relation to appeals to the court of appeals, shall apply to all judgments in proceedings upon mandamus, hereafter rendered.

Provisions of Code of Procedure to apply.

20 N. Y., 530.

CHAPTER X.

Fees and Costs.

CHAP. 476.

AN ACT to restrict and equalize certain fees of notaries public.

PASSED May 16, 1837.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. It shall not be lawful for any notary public, directly or indirectly, to demand or receive for the protest for non-payment of any note, or for the non-acceptance or non-payment of any bill of exchange, check or draft, and giving the requisite notices and certificates of such protest, including his notarial seal, if affixed thereto, any greater fee

Fees of notaries.

PART III.

or reward than seventy-five cents, and the sum necessarily paid for the prepayment of the postage upon such notices; which may be demanded and received by the notary giving such notices, in the same manner as the fees of a notary public; and it shall be the duty of such notary to affix his seal to such protest free of expense, except as above, whenever he shall be requested so to do; and he shall also give a certificate under his seal, free of expense, except as aforesaid, under the provisions of the eighth section of the act entitled "An act relative to proceedings in suits commenced by declaration, and for other purposes," passed April 29, 1833.

As amended by Laws of 1855, ch. 145.

§ 2. So much of the act, entitled "An act to amend the act, entitled 'An act to create a fund for the benefit of the creditors of certain monied corporations, and for other purposes,'" passed May 11, 1835, as restricts the fees of certain notaries public therein mentioned, is hereby repealed.

CHAP. 386.

AN ACT concerning costs and fees in courts of law and for other purposes.

PASSED May 14, 1840.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Fees in
courts of
record.

§ 1. For the following services hereafter done or performed in any court of law in this state, being a court of record, the following fees shall be allowed :

Counsellors

§ 2. Fees of Counsellors :

Retaining fees, five dollars; but not to be allowed in any action unless an issue of law or fact shall have been joined therein.

Perusing and amending interrogatories, every case, bill of exceptions, demurrer to evidence, special verdict, papers to set aside report of referees upon the merits or special pleading, except declarations on bills of exchange, promissory notes, bonds for the payment of money only, and on judgments, two dollars.

Arguing every special non-enumerated motion, if opposed, five dollars; if not opposed, two dollars.

For the trial of a cause before a jury or before referees, arguing a demurrer, special verdict, bill of exceptions, case, demurrer to evidence, any enumerated motion, or any matter brought by writ of error, certiorari, or habeas corpus or a return to a mandamus or prohibition, five dollars; attending prepared for such trial or argument, pursuant to notice, three dollars.

§ 3. Fees of Attorneys:

Retaining fee, three dollars; but no retaining fee shall be allowed to the plaintiff's attorney in any suit upon any bond taken on the arrest of a defendant, nor to a defendant's attorney upon confessing a judgment without suit.

Drawing and engrossing every writ of *capias ad respondendum*, writ of execution for debt, damages or costs recovered, or writ of *subpoena*, one dollar; and for every necessary copy of such *subpoena*, twenty-five cents; but only one *subpoena*, except a *subpoena duces tecum* shall be allowed for any one circuit or term.

Drawing and engrossing every writ of possession of lands one dollar and fifty cents.

Drawing and engrossing every writ of execution in *replevin* requiring the delivery or return of property, one dollar and fifty cents.

Drawing and engrossing every attachment or precept for non-performance of any rule or order of court, one dollar.

For every *subpoena* ticket actually delivered to a witness, twenty-five cents.

Drawing and engrossing every writ of *certiorari*, every writ of error, *procedendo* or prohibition, one dollar and fifty cents.

Drawing and engrossing every writ of *mandamus*, three dollars; and for every copy to serve, one dollar and fifty cents.

Drawing and engrossing every other writ, process or precept not otherwise provided for in this act, one dollar; and for every copy thereof to serve when necessary, fifty cents.

Drawing every declaration including a copy of any written instrument, *oyer* of deed or bill of particulars, two dollars and fifty cents; and for every necessary copy thereof, one dollar and twenty-five cents.

Drawing every plea including notice of matter to be given in evidence, *avowry*, *cognizance* or other answer to a previous pleading, one dollar and fifty cents; and for every necessary copy thereof, seventy-five cents; but no additional allowance shall be made for several pleas or answers to the same previous pleading.

Drawing a demurrer or joinder in demurrer, one dollar, and for every necessary copy thereof, fifty cents.

For a copy of the pleadings to be used by the court, or referees, upon the trial of a cause, three dollars; but no more than one copy shall be allowed in any one cause. Circuit rolls are hereby abolished.

Drawing a case, bill of exceptions, special verdict, papers to set aside a report of referees upon the merits or demurrer to evidence, five dollars; and for every necessary copy thereof, two dollars and fifty cents.

Drawing amendments to a case, bill of exceptions or statement of a case before referees, two dollars; and for every copy thereof, one dollar.

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Drawing an assignment of errors or joinder in error, one dollar; and for every necessary copy thereof, fifty cents.

Every demurrer book or error book, including all the necessary writs, pleadings and entries, two dollars.

Drawing and engrossing a record of judgment, including continuances, postea and necessary entries, three dollars.

Drawing every affidavit of merits, to prevent an inquest by default, to put off a trial, or to verify a plea, or to procure an order for a bill of particulars, or to hold to bail, or to procure a discharge from arrest, on filing common bail, or to obtain an order to show cause of action, including all necessary copies thereof, seventy-five cents.

Drawing and engrossing every writ of scire facias for continuing a suit before judgment, two dollars; and for every copy to serve, one dollar.

Drawing and engrossing every writ of scire facias to show cause why execution should not issue upon a judgment rendered, one dollar and fifty cents; and for every copy to serve, seventy-five cents.

Drawing, and copies of affidavit, bond and other necessary papers to authorize the issuing and service of a writ of replevin, one dollar and fifty cents.

Drawing and engrossing a writ of replevin, including a summons or notice to be served upon the defendant, one dollar and fifty cents.

Drawing and engrossing a writ of summons against a corporation, one dollar and fifty cents; and for a copy to serve, seventy-five cents.

Procuring the admission of guardian or next friend, including all charges except the fees of officers, one dollar; and copy of the papers to serve on the opposite party, including notice and service, fifty cents.

Procuring an order for the examination of a witness out of court, or procuring an order out of court for a commission to examine witnesses, including all charges and services except the fees of officers, two dollars.

Drawing and engrossing a commission for taking the testimony of witnesses, including instructions to the commissioners, two dollars.

Procuring an order out of court for the discovery of books and papers, including all charges but the fees of officers, one dollar and seventy-five cents; copy of the papers and order to serve on the opposite party, one dollar.

Procuring an order for a bill of particulars, including all charges but the fees of officers, seventy-five cents.

Procuring an order out of court that the plaintiff file security for costs, including all charges but the fees of officers, one dollar; copy of the papers and order to serve on the opposite party, fifty cents.

Interrogatories to be annexed to any commission for the examination of witnesses, and procuring the settlement of the

same, including all charges except the fees of officers, two dollars and fifty cents; copy to serve, and copy to annex to the commission, one dollar each.

Cross interrogatories to be annexed to such commission and procuring the settlement of the same, including all charges but the fees of officers, one dollar and fifty cents; copy to serve and to annex to the said commission, fifty cents each.

Serving a subpoena on a witness and delivering a ticket therewith, twelve and a half cents.

Arguing every special motion, one dollar.

Attending the execution of a writ of inquiry, one dollar and fifty cents.

Attending the trial of a cause, three dollars.

Arguing a demurrer, special verdict, bill of exceptions case, demurrer to evidence, any enumerated motion or matter brought up by writ of error, certiorari, habeas corpus, or a return to a mandamus or prohibition, or attending, prepared for such argument, on notice from the adverse party, three dollars.

Drawing brief for trial and copies thereof, three dollars.

Drawing brief and points for argument of a cause, including all necessary copies, five dollars.

Drawing writ of inquiry and engrossing the same, with the necessary copy of pleadings therein, two dollars; and for drawing and engrossing an inquisition, fifty cents.

Serving a declaration in ejectment or in any suit commenced by declaration, twenty-five cents.

Every notice, copy and service thereof, twenty-five cents.

Furnishing proof of service of a notice, copy of a rule or order, or of the service of any process, pleading or paper, fifty cents; but no fee shall be allowed for such proof, unless the same be necessary for the purpose of making a special or a common ordinary motion, or to prove the service of a notice, order or other paper before a judge or commissioner out of court.

Serving a bill of costs with notice of taxation, fifty cents.

Drawing a bill of costs, if before trial or argument, fifty cents, if after trial or argument, one dollar; and for every copy thereof actually served upon the opposing party, or delivered to him or his attorney upon request, if before trial or argument, twenty-five cents, if after trial or argument, fifty cents.

Furnishing necessary proof of disbursements upon the taxation of costs, or necessary proof of the attendance of witnesses upon the trial of a cause or the execution of a writ of inquiry, fifty cents.

For attending a judge or commissioner upon an order or motion to show cause out of court, or upon the settlement of a case, bill of exceptions, or special verdict, or upon referees upon the settlement of their report, one dollar.

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A note of issue for trial or argument, and serving the same upon the clerk, twenty-five cents.

Attendance on striking a jury, or on the examination of a witness out of court, one dollar.

Attendance upon taxation of a bill of costs, twenty-five cents.

For drawing an attachment against a foreign corporation, including the application, affidavits, bond and other papers necessary to authorize the issuing thereof, five dollars; and for every necessary copy of such attachment, one dollar. For every day's attendance on the actual taking of the de bene esse deposition of a witness, one dollar.

Same person to have fees as attorney and counsel

§ 4. Where, by the preceding provisions, any fee is allowed to a counsellor or attorney, such fee shall be taxed only for one counsel or attorney, and the same person may be allowed fees both as attorney and counsel in the same cause.

Clerk's fees

§ 5. Clerk's fees:

Upon filing a writ by which any suit or proceeding shall be commenced, or upon filing a declaration, when a suit shall be commenced by declaration, twenty-five cents.

Upon entering a default, twenty-five cents.

Upon filing record of judgment, one dollar.

Entering satisfaction of a judgment when actually done, twelve and a half cents.

Filing all the papers upon both sides upon any special motion, and entering the final rule and order of the court thereon, fifty cents, to be paid by the party making the motion.

For copies of rules or orders, copies and exemplifications of records, and proceedings to be returned, upon certiorari, writ of error, or other writ, copies and exemplifications of records, pleadings, writs, and proceedings on file, furnished upon request, six cents for each folio.

Every certificate twelve and a half cents, but not to be allowed for certifying a paper to be a copy, for the copying of which he shall be entitled to a compensation.

Every cause noticed for trial or argument and entering the same on the calendar, twenty-five cents.

For services upon the trial of a cause to be paid by the party moving on the trial, fifty cents.

For every certified copy of the docket of a judgment, six cents.

For docketing a judgment, the record of which shall have been filed in another clerk's office, six cents.

Not to have fees unless provided by law.

§ 6. All clerks of said courts shall perform all the duties and services required of them by law, or the course and practice of such courts, without any fee or reward therefor, except such as is provided in this act, or as is otherwise provided by law.

Clerks to be agents.

§ 7. In all cases where, by the rules and practice of the said courts, and the court of chancery, attorneys and solicitors are

FEES AND COSTS.

required to appoint agents, the register, assistant clerks of such courts shall be such agents, and shall perform all the services usually performed by such agents without fee or reward.

§ 8. Witnesses fees :

For each witness, fifty cents, for each day while any court or officer, and if the witness resides more than five miles from the place of attendance, travelling fees of four cents per mile going and returning.

§ 9. All laws, concerning fees for the service of all courts of law, except in the court for the correction of errors, are hereby repealed.

§ 10. The crier of the supreme court shall receive for his services three dollars for each day during his attendance at the court, to be certified by the clerk of the court, audited by the Comptroller, and paid on his warrant by the Treasurer, out of the general fund. Criers of other courts shall receive, during their attendance upon the same, the same compensation as constables are by law allowed, to be audited and paid as county charges.

§ 11. In the following cases, where the party is entitled to recover costs in any action or proceeding, the court shall have judgment for costs, as follows :

1. If the action or proceeding be in the supreme court, the plaintiff be entitled to recover full costs of that action, or if the action be in any other court of law, and the plaintiff would be entitled to recover full costs of that court, the plaintiff shall recover costs for services mentioned in this act, at and after the rate in this act before prescribed, together with other fees and disbursements allowed by law.

2. In all other cases in the said courts, if the plaintiff be entitled by law to recover costs, such plaintiff shall recover for fees of attorney and counsel, two-thirds only of the amount prescribed for such services by this act, together with other fees and disbursements allowed by law.

3. When a defendant shall be entitled to recover costs in any court of law, he shall recover full costs for services mentioned, at the rate herein prescribed for such services, together with other fees and disbursements allowed by law.

[§ 12 repealed by Laws of 1842, ch. 277.]

§ 13. In all actions founded upon contract or upon tort, if judgment be rendered for the plaintiff, the costs of the plaintiff for attorney and counsel, exclusive of other fees and disbursements in the case, shall not exceed the sums following, viz.: In cases of judgment by default, for want of a plea to a declaration, when the damages shall be assessed by the clerk of the court or officer, a judgment by confession, no plea or demurrer having been put in; and in cases where judgment is entered, for the recovery of a warrant of attorney or without suit, if the costs be recovered or sum secured and payable by the condition of the judgment.

PART III

obligation on which the recovery is had be more than fifty dollars, and not over one hundred dollars, six dollars; if over one hundred dollars, and not over two hundred dollars, seven dollars and fifty cents; if over two hundred dollars, and not over three hundred dollars, nine dollars; if over three hundred dollars, and not over four hundred dollars, ten dollars and fifty cents; if over four hundred dollars, and not over five hundred dollars, twelve dollars; if over five hundred dollars, and not over one thousand dollars, fifteen dollars; if over one thousand, twenty dollars. In case of judgment by default for want of a plea to the declaration and damages assessed upon a writ of inquiry, if the recovery be over fifty dollars, and not exceeding two hundred and fifty dollars, seven dollars; if the recovery be over two hundred and fifty dollars, and not over five hundred dollars, twelve dollars; if the recovery be over five hundred dollars, fifteen dollars. In cases where the suit shall be settled before plea pleaded or default entered, and the sum allowed on settlement shall be fifty dollars or over, and under two hundred and fifty dollars, five dollars; if two hundred and fifty dollars or over, and under five hundred dollars, seven dollars and fifty cents; if over five hundred dollars, ten dollars, with one dollar in addition for every defendant more than one in all cases specified in this section, where the defendants are not sued as copartners.

3 D., 171.

Rules to
plead abol-
ished.

§ 14. On commencing a suit by declaration, and in cases of scire facias, no rule to plead shall be necessary; but a notice shall be annexed to the declaration or copy of scire facias, requiring the defendant to plead within such time as shall be required by the rules of the court.

Costs in
certain
cases in
supreme
court, to be
regulated
by court.

§ 15. The justices of the supreme court shall, by general rules or orders, make such rules and regulations as they shall deem just and proper, concerning the amount of costs to be allowed upon granting or denying special motions, and may fix the gross amount of costs to be awarded without taxation; and may, by such general rule or order, direct that such gross amount of cost may be increased in peculiar and important cases; and such general rules and orders shall be observed by all courts of law; and all orders awarding costs upon granting or denying special motions, shall specify the amount of such costs; and where the order for the payment of costs, or any sum of money upon a special motion, is not conditional, a precept to enforce payment of such costs or sum of money, may be issued without any demand or application to the court.

1 N. Y., 533.

Authority
of supreme
court.

§ 16. The supreme court may, by general rules and orders, abolish the practice of making such ordinary motions and entering such common rules as they may think proper, and such orders of the supreme court shall be observed by all other courts of law.

CHAP. X.
Pleas in
certain
cases to be
verified by
oath.

§ 17. In actions upon contract upon any written instrument or record, if the plaintiff shall describe the written instrument or record in the declaration, or annex a copy thereof to the declaration, unless the defendant verify his plea by affidavit, or annex thereto an affidavit of merits, in such form and manner as the supreme court shall prescribe, such plea may be disregarded by the plaintiff, and he may proceed to judgment in the same manner as if no plea had been served.

Costs in
certain
actions for
wrongs.

§ 18. In actions for assault and battery, or for false imprisonment, or for slanderous words, or for libel or malicious prosecution, prosecuted in any court of record, if the plaintiff shall not recover damages to the amount of fifty dollars, such plaintiff shall recover no more costs than damages.

2 B., 433.

§ 19. In actions of replevin hereafter prosecuted in any court of common pleas or mayor's court, if the plaintiff recover therein, but do not recover fifty dollars damages, and the value of the property is less than fifty dollars, neither party shall recover costs.

Replevin.

§ 20. In all cases in which courts of general sessions of the peace are authorized to award costs, such costs shall be awarded only at and after the rate allowed in and by the second subdivision, section eleven of this act; and the act entitled "An act regulating costs in the courts of general sessions of the peace," passed May 9, 1835, is hereby repealed.

Costs in
general
sessions.

§ 21. In case of a trial at circuit, the copy of the pleadings furnished for the court upon trial, with a certified copy of the minutes of the trial annexed without any postea thereon, shall be filed, and thereupon judgment shall be rendered for the party entitled thereto.

Circuit roll
and postea
abolished.

§ 22. In a summons for the commencement of a suit against a corporation, it shall be sufficient to state briefly the nature of the action, without setting out the cause of action at large.

Summons
against cor-
porations.

§ 23. Judgments may be entered and perfected at any time in term or vacation.

Judgments
in vacation.

3 D., 45.

§ 24. Writs of fieri facias may be issued and tested at any time in term or vacation, after the expiration of thirty days from the entry of such judgment, and such writs shall be made returnable sixty days from the receipt thereof, by the sheriff or other officer to whom the same shall be directed, and may be made returnable before the justices or judges of the court from which the execution issued, without mentioning any particular place where returnable.

Writs of
fieri facias.

§ 25. No judgment or decree which shall be entered after this act takes effect, shall be a lien upon real estate, unless the same shall be docketed in books to be provided and kept for that purpose by the county clerk of the county where the lands are situate.

Lien of
judgments
and decrees

1 B. Ch., 571.

PART III.
Transcripts
of dockets
in supreme
court.

Effect of
docketing.

Decrees in
chancery.

Judgments
in mayor's
courts, &c.

Ib. of com-
mon pleas
and superi-
or court.

Fieri facias
may issue
to any
county.

Books for
docketing
judgments
to be pro-
vided.

§ 26. After this act takes effect, when a judgment shall be perfected in the supreme court, or at any time within five years thereafter, the clerk, on request and on payment of the fees for the same, shall furnish the party with one or more certificates or transcripts, containing all the facts necessary to make a perfect docket of the judgment, and on presenting such transcript to any county clerk, he shall immediately file the same and docket the judgment in the manner required by law, specifying the court in which the judgment was recovered, the day and the hour on which it was perfected, and the day and hour of docketing the same. If such judgment shall not be docketed within ten days from the time when it was perfected, it shall only be a lien from the time of docketing; but if docketed within the said ten days, it shall be a lien from the time it was perfected, except as against bona fide purchasers and mortgagees.

17 N. Y., 487; 3 B. Ch., 119; 2 B. Ch., 196.

§ 27. After this act takes effect, the decrees of the court of chancery shall be docketed in the same manner and with the like effect as judgments of the supreme court.

§ 28. After this act takes effect, the judgments of the superior court of the city of New York, and of all mayor's courts, shall be docketed with the clerk of the county where the court is held, before the same shall become a lien.

§ 29. The judgments of the superior court of the city of New York, and of any court of common pleas, recovered after this act takes effect, may be docketed in the manner above mentioned, in any other county than that in which the judgment was rendered, with the like effect as is above provided in relation to the judgments of the supreme court.

21 B., 144.

§ 30. A fieri facias upon any judgment docketed as provided for in the next preceding section, may be issued out of the court in which the judgment was rendered, to the sheriff or other proper officer of any county where the judgment is docketed, with the like effect as though issued to the sheriff of the county where the court was held. Such execution shall be returned to and filed by the clerk of the court from which it was issued.

As amended by Laws of 1844, ch. 104.

[Section 31 repealed by Laws of 1844, ch. 312.]

[Sections 32, 33 repealed by Laws of 1844, ch. 104.]

§ 34. The county clerk shall provide and keep proper books, in which he shall docket all judgments and decrees in their regular order, according to priority, whether the judgment be rendered in the court of which he is clerk, or in some other court, and in all cases shall specify the court in which the judgment or decree was recovered or made. The expense of procuring such books shall be audited and paid in the same manner as other county charges.

FEES AND COSTS.

§ 35. The annual salaries now allowed by law to the clerk and assistant register of the court of chancery, and the clerks of the supreme court, are hereby reduced to five hundred dollars each; and of the aggregate amount of the reduction, one-half is hereby added to the annual appropriation for the enlargement of the state law library, and the other half shall be paid annually to the justices of the supreme court, for the purchase of books for their use, which shall be the property of the people of this state, and be deposited in the supreme court library; the said justices shall be required to account for the expenditures thereof to the Comptroller.

§ 36. Hereafter there shall not be paid to the clerk of the supreme court, the register and assistant register of the court of chancery, or either of them, any part of the sum now to be paid to them for clerk hire and office expenses, until they shall have fully accounted by vouchers, to the satisfaction of the Comptroller, for the disbursement of all sums previously received by them for that purpose, after the passing of this act.

§ 37. The said accounts shall be verified by the clerk of the court making the same; which affidavit shall state that the disbursements charged in said account were made in the keeping of the office in the charge of the person to whom the same were paid.

[Section 38 repealed by Laws of 1844, ch. 104.]

§ 39. Nothing in this act contained shall be deemed to apply to the court for the correction of errors, or to any counsellor, attorney or other officer thereof, of the supreme court of the city of New York.

1 N. Y., 533.

§ 40. The seventeenth, eighteenth, nineteenth, twentieth, twenty-first, twenty-second, twenty-third, twenty-fourth, twenty-fifth, twenty-sixth, twenty-seventh, twenty-eighth, twenty-ninth, thirtieth, thirty-first and thirty-second sections of Title three of Chapter ten of the third Part of the Statutes, and so much of Section thirty of the same Chapter and Part of the Revised Statutes, as prescribe the amount of fees for services of clerks of the supreme court, clerks of the circuit courts, and of the courts of common pleas or mayors' courts; and Section thirteen of Title four of the same Chapter, and also so much of the act entitled "An act concerning the compensation of clerks of the supreme court, and of the register, assistant register and clerks in the court of chancery," passed May 7, 1839, as relates to fees to be paid for the services of clerks of the supreme court, are hereby repealed.

19 B., 532.

As amended by Laws of 1844, ch. 104.

CHAP. 127.

AN ACT to establish uniform fees of clerks in naturalization cases, and to provide for the taxation of the fees of clerks and registers of counties.

PASSED April 6, 1844.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Fees for
naturaliza-
tion cases.

§ 1. The several clerks of the courts of this state, which by law have jurisdiction in cases of naturalization, shall, after the passage of this act, be entitled to demand and receive in naturalization cases, the following fees, and no more: For all the services of any such clerk upon the first application of an alien, including the oath or affirmation of such alien of his intention to become a citizen of the United States, the record and a certificate thereof, delivered to such alien, the sum of twenty cents. For all the services of any such clerk upon the completion of the proceedings necessary for any alien to become a citizen of the United States, including the record thereof, and a certified copy to be delivered to any person demanding the same, the sum of fifty cents.

Fees may
be required
to be taxed.

§ 2. All clerks and registers of counties claiming any fees by virtue of their respective offices, shall, upon being required in writing by the party liable to pay the same, his agent or attorney, and on payment of the expense thereof, have their fees taxed by some officer authorized to tax costs in the supreme court, and either party may appeal from such taxation to the supreme court.

Restriction.

§ 3. No clerk or register shall collect any fees after having been required as aforesaid to have the same taxed, without such taxation having been made.

§ 4. The fee for such taxation shall be fifty cents.

CHAP. 300.

AN ACT respecting the fees of surrogates.

PASSED May 7, 1844.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Repeal.

§ 1. Section thirty-two of title three of chapter ten of part third of the Revised Statutes, is hereby repealed.

Fees to be
received for
services.

§ 2. For the following services, hereafter done or performed by surrogates, the following fees shall be allowed, nor shall they be entitled to receive any other fees therefor:

Drawing proof of a will when contested, or any other proceeding before him, for which no specific compensation is provided, fifteen cents for every folio.

Drawing every petition in any proceeding before him, not otherwise provided for, including the affidavit of the truth of the facts stated therein, fifty cents.

Every certificate of the proof of a will, when contested, endorsed thereon, including the seal, fifty cents; and for any certificate upon exemplifications of records or papers filed in his office, or upon the papers transmitted upon appeal, including the seal, fifty cents.

Drawing, copying and approving of every bond required by law, fifty cents.

Drawing, copying and recording every necessary paper, and drawing and entering every necessary order, and for rendering every other service necessary to complete proceedings on the appointment of a general guardian of a minor, three dollars; and for the like services in appointing the same person guardian for any other minor of the same family at the same time, one dollar and fifty cents.

Drawing, entering and filing a renunciation, in cases where the same may be made by law, twenty-five cents.

A citation or summons, in cases not otherwise provided for, to all parties in the same proceeding, residing in any one county, including the seal, fifty cents; and for a citation to all parties in any other county, twenty-five cents.

A subpoena for all witnesses in the same proceeding, residing in one county, including the seal, twenty-five cents.

For every copy of a citation and subpoena, furnished by a surrogate, twelve and one-half cents, and every such copy of citation shall be signed by the surrogate.

A warrant of commitment or attachment, including the seal, fifty cents.

A discharge of any person committed, including the seal, fifty cents.

For drawing and taking every necessary affidavit, upon the return of an inventory, fifty cents.

For serving notice of any revocation, or other order or proceeding required by law to be served, twenty-five cents.

For swearing each witness in cases where a gross sum is not allowed, twelve and one-half cents.

For searching the records of his office for any one year, twelve and one-half cents; and for every additional year, six cents; but no more than twenty-five cents shall be charged or received for any one search.

Recording every will with the proof thereof, letters testamentary, letters of administration, report of commissioners for the admeasurement of dower, and every other proceeding required by law to be recorded, including the certificate, if any, at the foot of the record, when the recording is not specifically provided for in this act, ten cents for every folio.

For the translation of any will from any other than the English language, ten cents for every folio.

PART III.

Copies and exemplifications of any record, proceeding or order had or made before him, or of any papers filed in his office, transmitted on an appeal or furnished to any party on his request, six cents for every folio, to be paid by the person requesting them.

For making, drawing, entering and recording every order for the sale of real estate, and every final order or decree on the final settlement of accounts, one dollar and fifty cents; and for the confirmation of the sale of real estate, seventy-five cents; and for making, drawing, entering and recording any other order or decree, when the same is not otherwise provided for, twenty-five cents.

Hearing and determining, when the proof of a will or the right to administration or appointing a guardian is contested, two dollars.

Taking, stating and determining upon an account rendered upon a final settlement, or determining and deciding the distribution of personal estate, if contested, two dollars for each day necessarily spent therein, not exceeding three days.

For hearing and determining any objections to the appointment of an executor or administrator, or any application for his removal, or for the removal of any guardian; or any application to annul the probate of a will, two dollars.

For hearing and determining upon an application to lease, mortgage or sell real estate, two dollars.

For drawing and recording all necessary papers, and drawing and entering all necessary orders on applications for letters of administration, when not contested, and for all services necessary to complete the appointment of administrators, and for the appointment of appraisers, five dollars; but in cases where a citation is necessary, seventy-five cents in addition.

For investing, for the benefit of any minor, any legacies, or the distributive shares of the estate of any deceased person, in the stocks of this state, or of the United States, one per cent for a sum not exceeding two hundred dollars; and for any excess, one-quarter of one per cent; for investing the same on bond and mortgage of real estate, one-half of one per cent, for a sum not exceeding two hundred dollars, and one-quarter of one per cent for any excess.

For receiving the interest on such investment and paying over the same for the support and education of such minor, one-half of one per cent.

Appointing a guardian to defend any infant who shall be a party to any proceeding, fifty cents; but where there is more than one minor of the same family, and the same guardian is appointed for all, twenty-five cents for each additional minor; and no greater or other fee shall be charged for any service in relation to such appointment.

Hearing and determining upon the report of commissioners for the admeasurement of dower, one dollar.

For distributing any moneys brought into his office on the

sale of real estate, two per cent; but such commission shall not in any case exceed twenty dollars for distributing the whole money raised by such sale, and no executors or other persons, authorized to sell any real estate by order of any surrogate, shall be allowed any commission for receiving or paying to the surrogate the proceeds of such sale; but shall be allowed their expenses in conducting such sale, including two dollars for every deed prepared and executed by them thereon, and a compensation not exceeding two dollars a day for the time necessarily occupied in such sale.

But no fee shall be taken by any surrogate in any case when it shall appear to him, by the oath of the party applying for letters testamentary or of administration, that the goods, chattels and credits do not exceed the value of fifty dollars, nor shall he take any fee for copying any paper drawn by him or filed in his office, except as above provided.

For drawing and recording all necessary petitions, depositions, affidavits, citations and other papers, and for drawing and entering all necessary orders and decrees, administering oaths, appointing guardians ad litem, and appointing appraisers, and for rendering every other necessary service in cases of proof of will and issuing letters testamentary, when not contested, and the will does not exceed fifteen folios, surrogates shall receive twelve dollars; and where the will exceeds fifteen folios, ten cents per folio for recording such excess, and six cents per folio for the copy of such excess to be annexed to the letters testamentary.

For all fees on filing the annual account of any guardian, when the surrogate shall draw and take the affidavit of the guardian, and for examining such accounts, fifty cents; but when the same shall not be drawn nor taken by him, he shall charge no fees.

No charge shall be made for drawing, copying or recording his bill of fees in any case.

14 N. Y., 286.

§ 3. The fee for filing any paper in the surrogate's office is abolished.

§ 4. No son, partner or clerk of any surrogate shall be permitted to practice before such surrogate as attorney, solicitor or counsel for any party to any proceeding before him.

Restriction.

§ 5. Each surrogate shall, on or before the twentieth day of January next, make a report under oath, and transmit the same to the secretary of state, without expense to the state, of all his fees received or charged, during the year eighteen hundred and forty-four, stating therein the gross amount in every case where the law gives him a gross sum; and in all other cases stating particularly every item thereof, and showing a full and accurate account of all fees received or charged arising from said office for said year; and also stating the items and amount of his disbursements; and annually thereafter, between the first and twentieth day of January in each

Surrogates to report to secretary of state.

PART III.Title
amended.

year, he shall make a similar report for the year then next preceding.

§ 6. Title one of chapter three of part three of the Revised Statutes is hereby amended by adding thereto a section to be entitled the fourteenth section of said title as follows :

§ 14. The provisions of the second section of this title shall not apply to surrogates' courts except in the cases enumerated in section forty-eight of article third of title second of chapter sixth of part second relating to letters testamentary and of administration, unless an objection shall be taken on behalf of the parties interested at the first hearing or proceedings before the surrogate, on account or such surrogate being disqualified by virtue of the said second section.

CHAP. 339.

AN ACT in relation to the fees of certain officers for taking the acknowledgment of deeds, and for other services.

PASSED October 26, 1847.

The People of the State of New York, represented in Senate and Assembly, do enact as follows :

Fees so be
taken.

§ 1. No officer authorized to perform such duties shall receive for administering any oath or affirmation, or for taking any acknowledgment, any greater sum than justices of the peace are now authorized by law to receive for like services.

CHAP. 225.

AN ACT in relation to the fees of sheriffs in certain cases, and to the return by them of executions by mail.

PASSED April 8, 1850.

The People of the State of New York, represented in Senate and Assembly, do enact as follows :

Sheriffs to
receive 50
cents fees
on execu-
tion.

§ 1. In addition to the fees now allowed to sheriffs on executions against property in civil actions, they shall be entitled to demand and receive on such executions the sum of fifty cents for receiving and entering the same in their books, searching for property and paying the postage on the return of the said execution, if such return be made by mail, as hereafter provided, which sum shall be a charge against and to be collected of the person by whom the said execution was issued, except when he is a county clerk, or of the person in whose favor the judgment was rendered, except as is otherwise provided in section two of this act.

Fees to be
taxed as
disburse-

§ 2. The said sum of fifty cents, in the case of judgments hereafter recovered, shall be one of the disbursements to be

included in the bill of costs fixed in favor of the party thereto. In cases when judgment has been already given, the said sum shall be collected by the sheriff from the party liable in the execution in the same manner as his fees are now collected.

§ 3. Sheriffs, under sheriffs, and deputy sheriffs, shall return all process in civil actions by mail, where the residence of such return resides in a different place from that of the clerk's office to which the return is to be made, provided there is a regular communication between which places there is a regular communication by mail; but such return to be valid shall be made by the said process enclosed in an envelope and properly addressed to the said officer, and the postage thereon paid by the sheriff so returning the same.

CHAP. 564.

AN ACT to abolish the fees of county judges.

PASSED April 18, 1892.

The People of the State of New York, represented by the Senate and Assembly, do enact as follows:

§ 1. County judges shall not hereafter take or receive any fees for services rendered by them, except for services as may be performed by justices of the peace or commissioners of deeds. This act shall not be deemed to surrogates' fees.

§ 2. No county judge shall receive or be allowed fees for services rendered by him, than are now law to said justices of the peace or commissioners of deeds.

§ 3. All laws inconsistent with this act are hereby repealed.

PART III.

Costs to be included in judgment.

cents; trial of an issue of fact, in case of an appearance and answer, fifty cents; entering judgment, twenty-five cents; taking affidavits, ten cents; drawing bond, twenty-five cents; and receiving and entering verdict of jury, twenty cents.

§ 2. Whenever a judgment shall be rendered in a court of a justice of the peace, in civil actions, it shall be with the costs of suit; but the whole amount of all the items of such costs to be included in the entry of judgment, except charges for the attendance of witnesses from another county, shall not in any case exceed the sum of five dollars, unless such suit shall be adjourned more than once, at the request and on the motion of the party against whom judgment shall be finally rendered; and in such case the costs of such additional adjournment may be included in the entry of judgment.

§ 3. All acts and parts of acts inconsistent with this act are hereby repealed, except such as are locally applicable to any of the cities of this state.

CHAP. 170.

AN ACT in relation to fees of notaries public in certain cases.

PASSED April 8, 1859.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Fees of notary public.

§ 1. It shall not be lawful for any notary public, directly or indirectly, to demand or receive for the service of any notices of the non-payment of any tax or assessment upon any mortgagee or mortgagees, pursuant to the act authorizing mortgagees to redeem real estate sold for taxes and assessments, passed May fourteenth, eighteen hundred and forty, and for a certificate thereof under his hand and seal, any greater fee or reward than seventy-five cents for each mortgage upon which such notice or notices are given.

CHAP. 252.

AN ACT in relation to the publication of legal notices.

PASSED April 12, 1859; three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Compensation for publishing.

§ 1. The proprietor or proprietors of any newspaper may charge and collect, for publishing any notice, order, citation, summons, or other proceeding or advertisement required by law to be published, not more than seventy-five cents per folio for the first insertion, and thirty cents for each subsequent insertion after the first.

But this act shall not operate to change the present rates of compensation for the publication of the Session Laws; nor shall the provisions of this act apply to proceedings in surrogates' courts, or any notices required to be published relating to the estates of deceased persons.

§ 2. All laws and parts of laws inconsistent with this act are hereby repealed.

CHAP. 493.

AN ACT fixing the fees of justices of the peace in civil and criminal cases, and for other purposes.

PASSED April 17, 1860; three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. Justices of the peace in the state shall hereafter be allowed and receive the fees hereinafter stated, for the following services in civil cases.

Fees of
justice of
the peace
in civil
cases.

For a summons, fifteen cents; for warrant, attachment, or transcript of judgment, twenty-five cents; adjournment, twenty-five cents; for each subpoena, including all the names inserted therein, twenty-five cents; administering an oath, five cents; filing every paper necessary to be filed, five cents; swearing a jury, twenty-five cents; swearing a constable, five cents; trial of an issue of fact, in case of appearance and answer, fifty cents; entering judgment, twenty-five cents; taking affidavit, ten cents; drawing any bond twenty-five cents; receiving and entering verdict of jury, twenty cents; venire, twenty-five cents; drawing affidavits, applications and notices, where required by law, five cents per folio; execution, twenty-five cents; for the renewal of the same, twenty-five cents; for making a return to an appeal, two dollars; a warrant for the apprehension of any person charged with any violation of the laws concerning the internal police of the state, or with being the father of a bastard, twenty-five cents; indorsing any such warrant, issued from another county, twenty-five cents; a summons for any offense relating to the internal police of the state, or in case of any special proceedings to recover the possession of land, or otherwise, twenty-five cents; for drawing a record of conviction for contempts and other special cases, fifty cents; an execution upon any such conviction, twenty-five cents; a warrant of commitment, for any cause, twenty-five cents; for a precept to summon a jury in special cases, thirty-five cents; swearing such jury, twenty-five cents; hearing the matter concerning which a jury is summoned, fifty cents; receiving and entering their verdict, twenty cents; for a view of premises alleged to be deserted, fifty cents; hearing an application for a commission to examine witnesses, fifty cents; for every order for such com-

PART III.

mission, and attending, settling and certifying interrogatories, fifty cents; for taking depositions of witnesses, upon an order or commission issued by some court in this or a foreign state or territory, five cents per folio, and for making the necessary return and certificates thereto, fifty cents.

As amended by Laws of 1861, ch. 11.

Judgments
in civil
actions to
include
costs of
suit.

§ 2. Whenever a judgment shall be rendered in a court of justice of the peace, in civil actions, it shall be with costs of the suit; but the whole amount of the items of such costs, to be included in the entry of judgment, except charges for the attendance of witnesses from another county, shall not in any case exceed the sum of five dollars, unless such suit shall be adjourned more than once at the request and on motion of the party against whom judgment shall be finally rendered, and in such case the costs of such additional adjournment may be included in the entry of judgment.

Fees in criminal cases.

Fees of
justices in
criminal
cases.

§ 3. The several justices of the peace in the state, hereafter shall be allowed and receive the following fees for the services hereinafter mentioned, in criminal cases:

For administering an oath, five cents; a warrant (but no person shall be obliged to issue a warrant on any complaint for assault and battery unless the person making such complaint and requiring such warrant shall pay the fee therefor), twenty-five cents; a bond or recognizance, twenty-five cents; a subpoena, including all the names inserted therein, twenty-five cents; a commitment for want of bail, twenty-five cents; for an examination of the accused, where such examination is required by law, one dollar; for every necessary adjournment of the hearing or examination, twenty-five cents.

Fees of courts of special sessions.

Courts of
special
sessions.

For a venire to summon a jury, twenty-five cents; for swearing a jury, twenty-five cents; for swearing each witness on the trial, five cents; for a subpoena, including all names inserted therein, twenty-five cents; for a trial fee, one dollar per day during the necessary and actual continuance of the trial; for swearing constable, five cents; for receiving and entering the verdict of the jury, twenty cents; for entering the sentence of the court, twenty-five cents; for warrant of commitment on sentence, twenty-five cents; for record of conviction and filing same, seventy-five cents; but all such charges, in any one case, shall not exceed five dollars, unless such court continue more than one day; in such case the costs of such additional day may be added thereto; for a return to any writ of certiorari, to be paid by the county, two dollars.

Fines in
courts of
sessions
in criminal
cases.

§ 4. Whenever a conviction shall be had in any court of sessions for any criminal offense, a record thereof shall be made by said court and filed in the office of the clerk of the

county where said conviction shall be had, within thirty days from the time of said conviction; and whenever any fine imposed by said court shall be paid to said court, the same shall be paid to the treasurer of said county within thirty days after the receipt thereof; and any neglect or refusal to file such conviction, or pay over said money within the period afforesaid, shall be deemed a misdemeanor.

§ 5. All acts and parts of acts inconsistent with this act are hereby repealed, except such as are locally applicable to any of the cities of this state.

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